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ARBITRAL TRIBUNAL
ESTABLISHED BY
AGREEMENT OF OCTOBER 23, 1985

DISPUTE CONCERNING FILLETING WITHIN THE GULF OF ST. LAWRENCE
BY THE FRENCH TRAWLERS REFERRED TO IN ARTICLE 4(b)
OF THE FISHERIES AGREEMENT BETWEEN CANADA AND FRANCE
OF MARCH 27, 1972

MEMORIAL SUBMITTED BY CANADA

FEBRUARY 22, 1986



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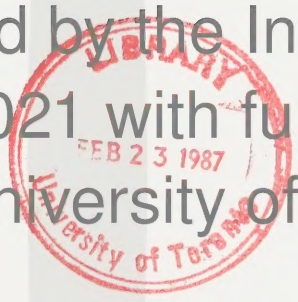
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FEBRUARY 22, 1985





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A chart of the Gulf of St. Lawrence,
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ARBITRATION AGREEMENT

ARBITRATION AGREEMENT
BETWEEN CANADA AND FRANCE
OCTOBER 23, 1985

The Government of Canada and the Government of the French Republic (hereinafter "the Parties");

Considering the Agreement between Canada and France on their Mutual Fishing Relations, signed at Ottawa on March 27, 1972 (hereinafter "the Agreement");

Whereas a dispute has arisen between the Parties concerning the application of the Agreement;

Whereas the Parties have decided to refer this dispute to arbitration pursuant to Article 10 of the Agreement;

Have agreed as follows:

Article 1

1. An arbitral tribunal (hereinafter "the Tribunal") is established, composed of Donat Pharand, expert nominated by the Government of Canada, Jean-Pierre Quéneudec, expert nominated by the Government of the French Republic, and a third expert, Paul de Visscher, who shall act as Chairman of the Tribunal.

2. If the expert nominated by the Government of Canada is unable to act, the Government of Canada shall promptly nominate another expert to replace him. If the expert nominated by the Government of the French

Republic is unable to act, the Government of the French Republic shall promptly nominate another expert to replace him. If the third expert is unable to act, the two Governments shall promptly agree on a replacement, who shall not be a national of either Party.

Article 2

Ruling in accordance with international law, the Tribunal is requested to adjudicate the dispute between the Parties in respect of filleting within the Gulf of St. Lawrence by the French trawlers referred to in Article 4(b) of the Agreement between Canada and France on their Mutual Fishing Relations of March 27, 1972.

Article 3

Immediately following its constitution and after consulting the Parties, the Tribunal shall designate a Registrar.

Article 4

1. Within thirty days of the signing of this Agreement, each Party shall designate an agent who will represent it before the Tribunal and shall communicate the name and address of the agent so designated to the other Party and to the Registrar.

2. Each agent so designated may nominate a deputy to act for him where necessary and may be assisted by such counsel, experts and staff as he deems necessary. The name and address of the deputy so nominated will be communicated in the same manner as that of the agent.

Article 5

1. The Tribunal is properly constituted only if all members are present.

2. Subject to the provisions of this Agreement, or unless otherwise agreed by the Parties, the procedure of the Tribunal shall be governed by Articles 67 to 78 of the 1907 Convention for the Pacific Settlement of International Disputes. Except as otherwise provided, the Tribunal shall determine its own procedure and all questions relating to the conduct of the arbitration.

3. All decisions of the Tribunal shall be made by a majority.

Article 6

1. Without prejudice to any question relating to the burden of proof, the proceedings before the Tribunal shall comprise two phases, one written and the other oral.

2. The written pleadings shall consist of:

(a) a memorial to be submitted by each Party to the other Party and to the Registrar on February 22nd 1986;

(b) a counter-memorial to be submitted by each Party to the other Party and to the Registrar two months after the submission of memorials;

(c) any further pleading the Tribunal deems necessary.

3. The oral proceedings shall commence six weeks after the submission of counter-memorials.

4. The Tribunal may extend any of these time limits by a maximum of 15 days, at the request of either Party or on its own initiative.

5. The Registrar shall notify the Parties of an address for the filing of their written pleadings and of any other documents.

6. Each Party shall consult the other Party prior to introducing into evidence or argument any diplomatic or other confidential correspondence between Canada and France. Neither Party shall invoke in support of its own position or to the detriment of the position of the other Party:

(a) proposals or counter-proposals made with a view to concluding this Agreement or any

interim arrangement to be applied pending the award of the Tribunal;

(b) any such interim arrangement.

7. The written pleadings may not be made public until the oral proceedings have commenced. Each Party shall be responsible for making its own written pleadings public.

Article 7

1. The Tribunal shall sit at Geneva at a place and, subject to Article 6 paragraph 3, for such hours and on such days as it may determine after consultation with the agents.

2. The Tribunal may engage such staff and secure such services and equipment as it deems necessary.

Article 8

1. The written and oral pleadings shall be in French or in English. Decisions of the Tribunal shall be in both languages. Verbatim records of the oral proceedings shall be produced each day in the language in which each statement was delivered. Each Party may make public the verbatim records of its oral pleadings.

2. The Tribunal shall arrange for such translation and interpretation services as may be necessary and shall keep a verbatim record of all oral proceedings in French and in English.

Article 9

1. The remuneration of the members of the Tribunal and of the Registrar shall be borne equally by the Parties.

2. The general expenses of the arbitration shall be borne equally by the Parties. The Registrar shall keep a record and render a final account of these expenses.

3. Each Party shall bear its own expenses incurred in the preparation and presentation of its case.

Article 10

1. The Tribunal shall render its award within thirty days of the conclusion of the oral proceedings. This time limit may if necessary be extended by a maximum of 15 days by a decision of the Tribunal. The Tribunal shall sit from the date of commencement of the oral proceedings until the date it renders its award.

2. The Tribunal's award shall be fully reasoned. Each member shall have the right to attach an individual or dissenting opinion.

3. A signed copy of the award and of any individual or dissenting opinion shall be immediately handed to the agents or their deputies by the Chairman or by a member of the Tribunal designated by him. Each Party may make public the award and any individual or dissenting opinion.

4. The award of the Tribunal shall be final and binding and both Parties shall take all necessary steps to implement it.

5. Within 60 days of receipt of the award, either Party may refer to the Tribunal any dispute between the Parties as to the meaning and scope of the award.

Article 11

This Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose by their respective Governments, have signed this Agreement.

DONE IN DUPLICATE at Paris this twenty-third day of October, 1985, in French and in English, each version being equally authentic.

1972 FISHERIES AGREEMENT
BETWEEN CANADA AND FRANCE

AGREEMENT BETWEEN CANADA AND FRANCE
ON THEIR MUTUAL FISHING RELATIONS
MARCH 27, 1972

The Government of Canada and the Government of France,

Having regard to the fact that the Canadian Government has deemed it necessary, notably with a view to ensuring the protection of Canadian fisheries, to adopt certain measures relating to the delimitation of the territorial sea and the fishing zones of Canada,

Considering it desirable to adapt to present circumstances their mutual relations in fishery matters,

Have agreed as follows:

ARTICLE 1

The Government of France renounces the privileges established to its advantage in fishery matters by the Convention signed at London, on April 8, 1904, between the United Kingdom and France. The present agreement supersedes all previous treaty provisions relating to fishing by French nationals off the Atlantic coast of Canada.

ARTICLE 2

In return, the Canadian Government undertakes in the event of a modification to the juridical regime relating to the waters situated beyond the present

limits of the territorial sea and fishing zones of Canada on the Atlantic coast, to recognize the right of French nationals to fish in these waters subject to possible measures for the conservation of resources, including the establishment of quotas. The French Government undertakes for its part to grant reciprocity to Canadian nationals off the coast of Saint-Pierre and Miquelon.

ARTICLE 3

Fishing vessels registered in metropolitan France may continue to fish from January 15 to May 15 each year, up to May 15, 1986, on an equal footing with Canadian vessels, in the Canadian fishing zone within the Gulf of St. Lawrence, east of the meridian of longitude 61 degrees 30 mins west, subject to the provisions of Articles 5 and 6.

ARTICLE 4

In view of the special situation of Saint-Pierre and Miquelon and as an arrangement between neighbours:

- (a) French coastal fishing boats registered in Saint-Pierre and Miquelon may continue to fish in the areas where they have traditionally fished along the coasts of Newfoundland, and Newfoundland coastal fishing boats shall enjoy the same right along the coasts of Saint-Pierre and Miquelon;

- (b) A maximum of ten French trawlers registered in Saint-Pierre and Miquelon, of a maximum length of 50 metres, may continue to fish along the coasts of Newfoundland, of Nova Scotia (with the exception of the Bay of Fundy), and in the Canadian fishing zone within the Gulf of St. Lawrence, on an equal footing with Canadian trawlers; Canadian trawlers registered in the ports on the Atlantic coast of Canada may continue to fish along the coasts of Saint-Pierre and Miquelon on an equal footing with French trawlers.

ARTICLE 5

French fishing vessels covered by the provision of Article 3 must not direct their fishing effort to the taking of species other than those which they have traditionally exploited in the five-year period immediately preceding this agreement, nor shall they substantially increase the level of such effort.

ARTICLE 6

1. Canadian fishery regulations shall be applied without discrimination in fact or in law to the French fishing vessels covered by Articles 3 and 4, including regulations concerning the dimensions of vessels authorized to fish less than 12 miles from the Atlantic coast of Canada.

2. French fishery regulations shall be applied under the same conditions to the Canadian fishing vessels covered by Article 4.

3. Before promulgating new regulations applicable to these vessels, the authorities of each of the parties shall give three months prior notice to the authorities of the other party.

ARTICLE 7

The French patrol vessel which usually accompanies the French fishing fleet may continue to exercise its functions of assistance in the Gulf of St. Lawrence.

ARTICLE 8

The line defined in the annex to the present agreement determines, in the area between Newfoundland and the islands of Saint-Pierre and Miquelon, the limit of the territorial waters of Canada and of the zones submitted to the fishery jurisdiction of France.

ARTICLE 9

No provision of the present agreement shall be interpreted as prejudicing the views and future claims of either party concerning internal waters, territorial waters or jurisdiction with respect to fisheries or the resources of the continental shelf, or the bilateral or multilateral agreements to which either government is a party.

ARTICLE 10

1. The contracting parties shall establish a Commission to consider all disputes concerning the application of this agreement.

2. The Commission shall consist of one national expert nominated by each of the parties for ten years. In addition, the two Governments shall designate by mutual agreement a third expert who shall not be a national of either party.

3. If, in connection with any dispute referred to the Commission by either of the contracting parties, the Commission has not within one month reached a decision acceptable to the contracting parties, reference shall be made to the third expert. The Commission shall then sit as an arbitral tribunal under the chairmanship of the third expert.

4. Decisions of the Commission sitting as an arbitral tribunal shall be taken by a majority, and shall be binding on the contracting parties.

IN WITNESS WHEREOF the undersigned, duly authorized for this purpose by their respective governments, have signed the present Agreement and have affixed thereto their seals.

DONE in two copies at Ottawa in the English and French languages, each version being equally authentic, this "27th" day of March, 1972.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet par leurs gouvernements respectifs, ont signé le présent Accord et y ont apposé leurs sceaux.

FAIT en deux exemplaires à Ottawa, en langues anglaise et française, chaque version faisant également foi, ce "27ième" jour de mars 1972.

MEMORIAL SUBMITTED BY CANADA

MEMORIAL SUBMITTED BY CANADA

PART I

INTRODUCTION

1. This Memorial is filed in accordance with Article 6 paragraph 2(a) of the Arbitration Agreement between Canada and France signed at Paris on October 23, 1985.

The Dispute

2. Article 2 of the Arbitration Agreement requests the Tribunal as follows:

Ruling in accordance with international law, the Tribunal is requested to adjudicate the dispute between the Parties in respect of filleting within the Gulf of St. Lawrence by the French

trawlers referred to in Article 4(b) of the Agreement between Canada and France on their Mutual Fishing Relations of March 27, 1972.¹

-
1. For the text of the Arbitration Agreement see pages viii to xiii.

Article 4 of the 1972 Agreement provides:

In view of the special situation of Saint-Pierre and Miquelon and as an arrangement between neighbours:

- (a) French coastal fishing boats registered in Saint-Pierre and Miquelon may continue to fish in the areas where they have traditionally fished along the coasts of Newfoundland, and Newfoundland coastal fishing boats shall enjoy the same right along the coasts of Saint-Pierre and Miquelon;
- (b) A maximum of ten French trawlers registered in Saint-Pierre and Miquelon, of a maximum length of 50 metres, may continue to fish along the coasts of Newfoundland, of Nova Scotia (with the exception of the Bay of Fundy), and in the Canadian fishing zone within the Gulf of St. Lawrence, on an equal footing with Canadian trawlers; Canadian trawlers registered in the ports on the Atlantic coast of Canada may continue to fish along the coasts of Saint-Pierre and Miquelon on an equal footing with French trawlers.

For the text of the 1972 Agreement see pages xv to xx . A copy of the Agreement with annexes is found in Annex 1.

3. On January 4, 1985 a Foreign Fishing Vessel Licence was issued to the Saint-Pierre-et-Miquelon registered factory freezer trawler² LA BRETAGNE under the authority of the Minister of Fisheries and Oceans for Canada pursuant to the Coastal Fisheries Protection Act and the regulations made thereunder.³ By amendment number 1, issued on January 24, 1985, LA BRETAGNE was authorized to fish in the Gulf of St. Lawrence⁴ subject to the following condition, which was noted on the licence:

In accordance with the current Canadian prohibition against the filleting of traditional groundfish species at sea by Canadian vessels, the LA BRETAGNE is permitted to process groundfish species in the Gulf of St. Lawrence to the headed and gutted form only.⁵

This condition prohibits LA BRETAGNE from operating as a factory freezer trawler in the Gulf of St. Lawrence.

-
2. A "factory freezer trawler" is a fishing vessel that can fillet and freeze its catch on board into a form ready for market. It is essentially a floating fish plant. Glossary, p. 76.
 3. R.S.C. 1970, c.C-21 and C.R.C., 1978 c. 413. Annexes 2 and 3.
 4. See Annex 4 for copies of the licence and Amendment Number 1.
 5. "Groundfish" is the collective term used to describe species that feed on or near the ocean bottom. The principal species include cod, haddock, redfish, pollock and flatfish species (e.g., turbot and witch flounder). Glossary, p. 77.

4. On January 25, 1985 France protested the condition attached to LA BRETAGNE's licence, claiming that it was contrary to the 1972 Agreement between Canada and France on their Mutual Fishing Relations. This was denied by Canada on February 4, 1985.⁶

5. Following an exchange of correspondence between Prime Minister Fabius and Prime Minister Mulroney in February 1985, it was agreed that the dispute be referred to arbitration in accordance with Article 10 of the 1972 Agreement.⁷ Although Article 10 provides for a preliminary phase before a Commission composed of experts nominated by each State, the Parties agreed to dispense with this phase and to place the matter directly before this Tribunal.

Overview of Canada's Argument

6. The Tribunal has been asked to "adjudicate the dispute between the Parties in respect of filleting in the Gulf of St. Lawrence by the French trawlers referred to in Article 4(b)" of the 1972 Agreement. That dispute

6. French diplomatic note No. 206/DJ/JFD/VP and Canadian diplomatic note No. 237. In diplomatic note No. 8/AE of January 16, 1985, France noted its concern that Canada had not yet issued a licence to LA BRETAGNE. Annexes 5 and 6.

7. Letter of February 7, 1985 from Prime Minister Fabius to Prime Minister Mulroney, attaching French aide-mémoire. Letter of February 27, 1985 from Prime Minister Mulroney to Prime Minister Fabius. Canadian aide-mémoire of February 28, 1985. Annexes 7 and 8.

arose because of the condition attached to the licence of LA BRETAGNE which prohibits it from operating as a factory freezer trawler in the Gulf of St. Lawrence. Thus, the issue in this arbitration is whether France has the right under the 1972 Agreement to operate LA BRETAGNE as a factory freezer trawler in the Gulf of St. Lawrence.

7. Canada has the exclusive right in accordance with international law to regulate the fishery in the Gulf of St. Lawrence. This right is qualified only to the extent provided for in the 1972 Agreement.

8. The primary purpose of the 1972 Agreement was to phase French vessels out of the Gulf fishery, as was done in the case of the vessels of other foreign States. Canada was exercising its exclusive rights over the Gulf fishery in the interests of conservation and rational management of stocks and in the interests of Canadian fishermen dependent upon that fishery.

9. In recognition of the situation of Saint-Pierre-et-Miquelon as a neighbour, Canada granted France the exceptional right to maintain a limited Saint-Pierre-et-Miquelon trawler fishery in the Gulf. This was done on the basis of assurances by France as to the limited nature of the Saint-Pierre-et-Miquelon Gulf fishery and as to its objective, which was to benefit the inhabitants of Saint-Pierre-et-Miquelon.

10. As a result, Article 4(b) of the 1972 Agreement provides for the continuation of fishing activity in the Gulf by Saint-Pierre-et-Miquelon trawlers on an "equal footing" with Canadian trawlers. This means, in effect, that the inhabitants of Saint-Pierre-et-Miquelon are not to be disadvantaged or advantaged in the Gulf fishery vis-à-vis the inhabitants of Canadian communities who fish in the Gulf. The obligation of non-discrimination contained in Article 4(b) constitutes the only limitation on Canada's exclusive right to regulate the fishery conducted by Saint-Pierre-et-Miquelon trawlers in the Gulf. In all other respects, Saint-Pierre-et-Miquelon vessels are subject to regulations applicable to the Gulf fishery just as Canadian vessels are subject to them.

11. Article 4(b) also contains limitations on the nature, number and length of the trawlers that were to be permitted to "continue to fish" in the Gulf. Clearly, the continuation of a limited Saint-Pierre-et-Miquelon fishery in the Gulf is all that was intended. The trawlers engaged in this fishery were to be authentic Saint-Pierre-et-Miquelon trawlers in the sense that their activities would benefit Saint-Pierre-et-Miquelon.

12. There is no basis in the 1972 Agreement for France's claim to a right to operate LA BRETAGNE as a factory freezer trawler in the Gulf of St. Lawrence. As Canadian vessels are prohibited from filleting at sea in the Gulf, Saint-Pierre-et-Miquelon registered vessels

must abide by the same restriction. Any other interpretation would defeat the express terms of Article 4(b) by putting Saint-Pierre-et-Miquelon registered vessels in a preferred position in the prosecution of the Gulf fishery and not on an "equal footing" with Canadian vessels.

13. Furthermore, France is seeking to apply the 1972 Agreement in a manner inconsistent with the intentions of the Parties. The development of a Saint-Pierre-et-Miquelon factory freezer trawler fleet in the Gulf has the potential to transform the Saint-Pierre-et-Miquelon Gulf fishery into something significantly different from what was intended by the Parties in concluding the 1972 Agreement. In effect, France would bring back into the Gulf under the cloak of Article 4(b) the very fishery that is to be excluded under Article 3. In addition, the real benefit of the operation of LA BRETAGNE as a factory freezer trawler in the Gulf goes to metropolitan France and not to Saint-Pierre-et-Miquelon.

Le Golfe du Saint-Laurent

100-

Projection de Mercator
Projection - Mercator
Eche 1: 3,193,000 à 47°30' N
Scale 1: 3,193,000 at 47°30' N



PART II

THE FACTS

A. The Gulf of St. Lawrence Groundfish Fishery

14. The Gulf of St. Lawrence⁸ is in the nature of an inland sea, surrounded by the provinces of Québec, Newfoundland, Nova Scotia, Prince Edward Island and New Brunswick (see Figure 1). The Gulf is a vulnerable region both ecologically and economically. The fishery in the Gulf, which provides the livelihood for the inhabitants of many Canadian coastal communities, requires careful management by Canada.

1. The Nature of the Gulf Fishery

15. The enclosed nature of the Gulf and its unique environmental characteristics, including the substantial inflow of fresh water from the St. Lawrence River, have

8. The term "Gulf of St. Lawrence" as used here corresponds to the "Canadian fishing zone within the Gulf of St. Lawrence" referred to in Article 4(b) of the 1972 Agreement. This is defined by reference to fisheries closing lines across Cabot Strait and the Strait of Belle Isle and referred to as "Fishing Zone 1" in Fishing Zones of Canada (Zones 1, 2 and 3) Order, Order in Council P.C. 1971-366, 25 February 1971, SOR/71-81. Annex 9.

Figure 2

Migrations saisonnières des stocks de morue du golfe

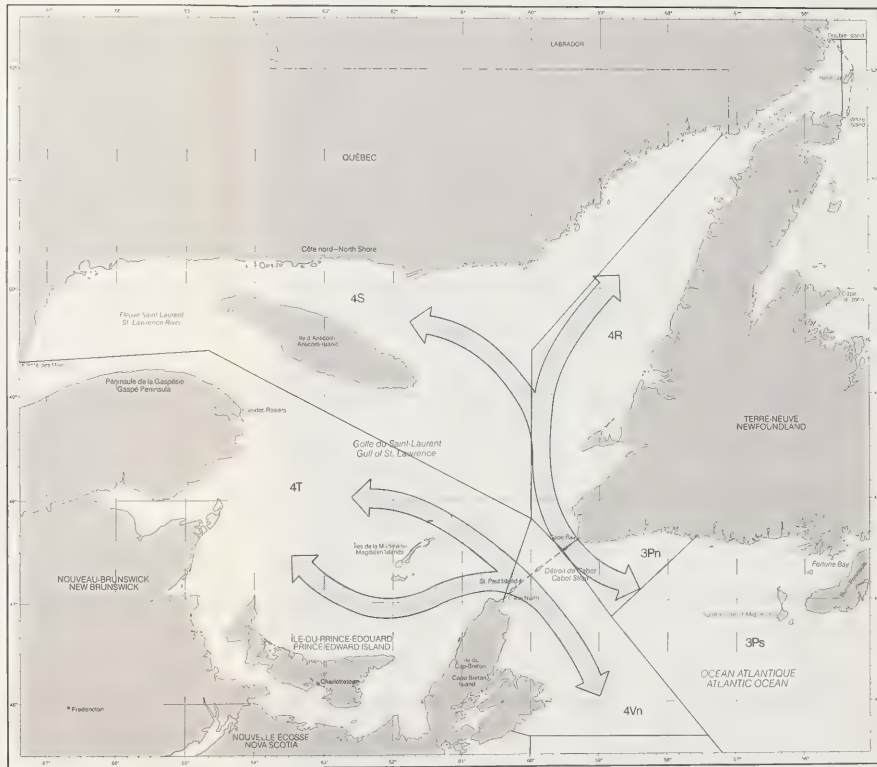
Seasonal Migrations of Gulf Cod Stocks



Divisions et subdivisions
statistiques
Statistical Divisions and
Subdivisions



Lignes de fermeture de pêche
Fisheries Closing Lines



contributed to the development of the cod stocks within the Gulf (see Figure 2)⁹ on which the principal groundfish fishery is based. Cod has long been the staple of the Gulf fishery and is still today the predominant groundfish species.¹⁰ In 1984 cod constituted almost 71% of the Gulf groundfish catch (see Figure 3).

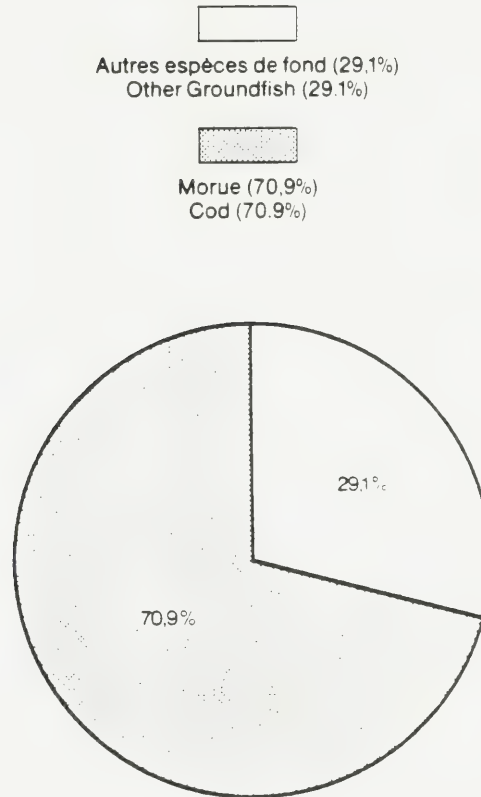
16. The Gulf groundfish fishery constitutes the economic base for many of the communities along the Gulf shores, providing employment on fishing vessels, in processing plants and in related industries. These communities depend primarily on the inshore fishery.¹¹

-
9. A "stock" is a relatively discrete population of a given species which is found in a specific geographical area. Glossary, p. 81. There are two Gulf cod stocks, each of which migrates in and out of the Gulf. The northern stock migrates between NAFO divisions 4R and 4S, which are inside the Gulf, and subdivision 3Pn, which is outside the Gulf (the "4RS3Pn stock"). The southern stock migrates between NAFO division 4T, which is inside the Gulf, and subdivision 4Vn, most of which is outside the Gulf (the "4TVn stock"). These stocks are managed as Gulf stocks throughout the whole of their migratory range. The divisions and subdivisions by which those stocks are identified are part of a system of statistical areas established by the International Commission for the Northwest Atlantic Fisheries (ICNAF), the predecessor of the Northwest Atlantic Fisheries Organization (NAFO). Glossary, p. 79.
10. For "groundfish" see Glossary, p. 77. Species other than groundfish caught in the Gulf include herring, crab, shrimp and lobster.
11. The "inshore fishery" is conducted close to the shore by boats less than 65 feet (19.8 m) in length. Glossary, p. 79.

Figure 3

**Part de la morue dans
le total des débarque-
ments de poisson de
fond dans des ports du
golfe du Saint-Laurent**

**Cod as a Percentage of
Total Groundfish
Landed at Ports in the
Gulf of St. Lawrence**



Source: Ministère des Pêches et
des Océans, données de 1984
Department of Fisheries and
Oceans 1984 data

In 1985 there were over 6,000 groundfish vessels based in the Gulf, most of which were under 65 feet (19.8m). Only 12 of these vessels were over 100 feet (30.48m).¹² There were 25,406 Canadian commercial fishermen operating in the Gulf in 1985, and 471 fishing ports.¹³

17. Geography and climate have a significant impact upon resource harvesting in the Gulf of St. Lawrence. For much of the winter and spring the Gulf is encumbered by ice (see Figure 4).¹⁴ This generally makes it impossible for Gulf fishermen to operate out of their ports during these periods and puts them at a disadvantage compared with fishermen outside the Gulf who operate from ice-free ports and have access to the winter and spring fishery inside the Gulf in Cabot Strait.

12. Department of Fisheries and Oceans data. Data referred to in this way throughout this Memorial have been drawn from detailed statistical records maintained by the Department of Fisheries and Oceans which are in a form that is impractical to reproduce. They will be provided to the Tribunal and the Agent for France if requested.

13. Department of Fisheries and Oceans 1985 data. The fishing ports on the Gulf shores are listed in Annex 10. "Port" in this context is defined as the home port of at least five commercial fishermen or of the fishing vessels they operate.

14. Scarratt, D.J. (ed.): Canadian Atlantic Offshore Fishery Atlas. Canadian Special Publication of Fisheries and Aquatic Sciences 47 (Revised). Ottawa, 1982, pp. 17-21. Annex 11.

Figure 4

Densité moyenne des glaces de janvier à avril

Average Ice Conditions from January to April



Eaux libres
Open Water



Étendue maximale des glaces
Maximum Extent of Ice



Banquise lâche: pêche difficile
pour les bâtiments basés dans le
golfe
Open Pack Ice: Difficult for most
Gulf Fishing Vessels to Operate

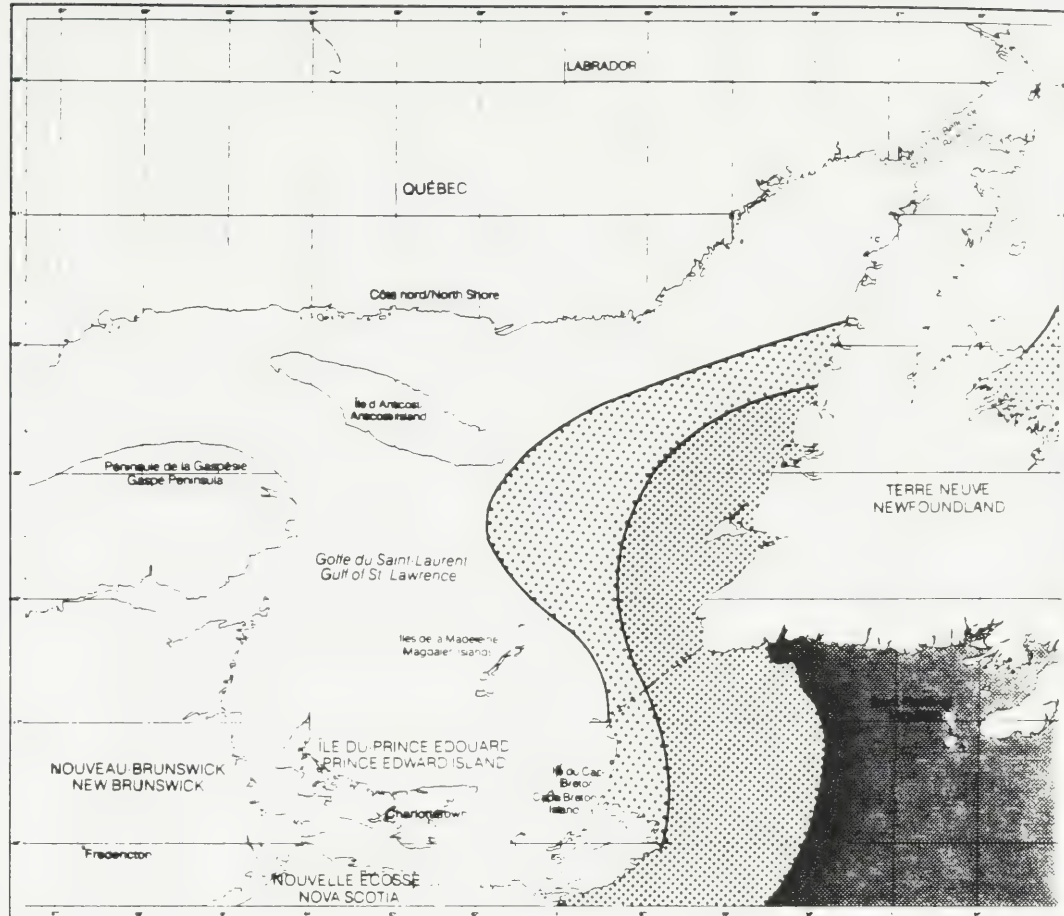


Banquise serrée: pêche impossible
pour les bâtiments basés dans
le golfe
Close Pack Ice: Impossible for
most Gulf Fishing Vessels to
Operate

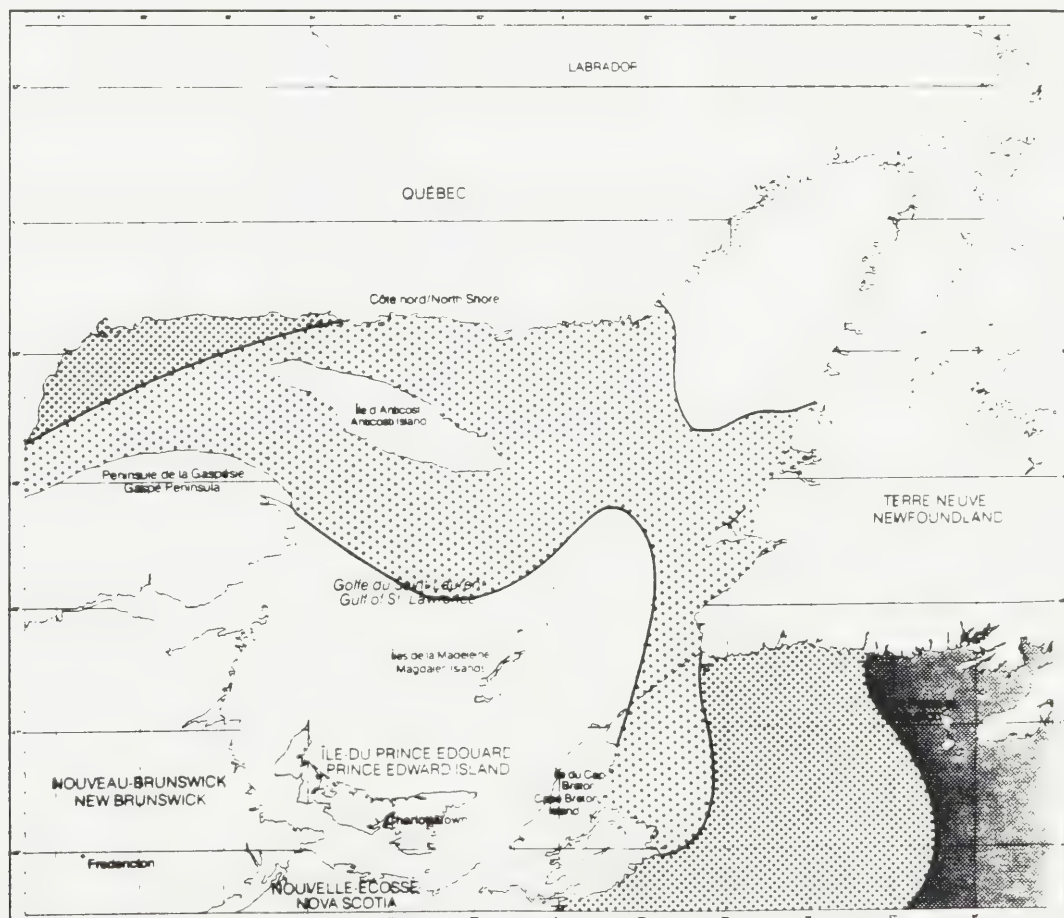


Lignes de fermeture de pêche
Fisheries Closing Lines

Projection de Mercator
Projection-Mercator
Echelle: 1 : 6 652 000 à 47° 30' N
Scale: 1 : 6 652 000 at 47° 30' N



Hiver
Winter



Printemps
Spring

18. Many of the small fishing communities that have developed around the periphery of the Gulf operate plants for the processing of their catch. There are 281 such processing plants along the Gulf shores (see Figure 5)¹⁵ which provide employment for over 20,000 persons.¹⁶ Practically all of the fish processed in these plants are caught in the Gulf. The Gulf groundfish fishery also supports plants outside the Gulf in Nova Scotia and along the south coast of Newfoundland.

19. In the 1950s and 1960s the traditional Canadian Gulf groundfish fishery was threatened by the influx of foreign fleets,¹⁷ in particular factory freezer trawlers, and large non-Gulf-based¹⁸ Canadian trawlers. The exclusion of most foreign vessels and of most non-Gulf-based Canadian trawlers from fishing groundfish in the Gulf, together with stricter controls on Gulf-based fishermen, have led to a recovery in Gulf groundfish stocks.

15. Department of Fisheries and Oceans 1985 data. The names and locations of the plants are listed in Annex 10.

16. Department of Fisheries and Oceans data.

17. Kirby, M.J.L.: Navigating Troubled Waters, A New Policy for the Atlantic Fisheries. Report of the Task Force on Atlantic Fisheries. Ottawa, December 1982, pp. 16-17. Annex 12.

18. A "non-Gulf-based vessel" is one whose registered home port is outside the Gulf of St. Lawrence. Glossary, p. 79.

Figure 5

Ports de pêche et usines de traitement de la région du golfe

Gulf Fishing Ports and Processing Plants



Port de pêche
Fishing Port



Usine de traitement
Processing Plant



Lignes de fermeture de pêche
Fisheries Closing Lines

Note La liste des ports et des usines figure à l'Annexe 10
The ports and the plants are listed in Annex 10



20. There are, nevertheless, insufficient resources available in the Gulf to support the fleet of vessels based there¹⁹ or to meet the needs of the processing plants dependent on Gulf resources. An inadequate supply of fish and consequent plant closures cause extensive economic and social problems for the Gulf communities.²⁰ This has important consequences for Canada's fisheries policy in respect of the Gulf.

2. The Management of the Gulf Fishery

21. The Fisheries Act²¹ is the primary source of authority for the regulation of fisheries in Canada. In accordance with that Act the Minister of Fisheries and Oceans has the broad responsibility for the management of the fishery. The general conditions under which fishing is to take place in Canadian waters are set out in regulations made pursuant to the Fisheries Act.²²

19. Op. cit. supra, note 17, p. 36. Annex 12.

20. Several fish processing plants have closed in recent years. A prominent example is the Georgetown Seafoods Limited plant, which closed in 1981. Annex 13.

21. Fisheries Act, R.S.C. 1970, c.F-14. Annex 14.

22. Canadian commercial fishermen operating on the east coast are governed by the Atlantic Fishery Regulations, 1985, Order in Council P.C. 1985-3662, December 19, 1985, SOR/86-21. Foreign vessels in all Canadian waters are subject to the Foreign Vessel Fishing Regulations, C.R.C., 1978 c.815. Annexes 15 and 16.

22. Control over access to the Canadian fishery by all vessels is exercised through the licensing system. Licences are issued under the authority of the Minister of Fisheries and Oceans.²³ The Coastal Fisheries Protection Act²⁴ provides for the licensing of foreign vessels to operate in Canadian waters. Conditions under which such licences are to be issued are set out in the Coastal Fisheries Protection Regulations.²⁵ Other conditions are established by the Minister in the exercise of his discretion in relation to the licensing of vessels. These conditions are announced by the Minister from time to time and are enforced through the licensing system.

23. Because of the finite nature of the resource, and the dependency of large numbers of fishermen and processing plants, the Gulf groundfish fishery is closely regulated. Canada sets a total allowable catch

23. Fisheries Act, s.7: "The Minister may, in his absolute discretion, wherever the exclusive right of fishing does not already exist by law, issue or authorize to be issued, leases and licences for fisheries or fishing, wherever situated or carried on" Annex 14.

24. R.S.C. 1970, c.C.-21, s. 4. Annex 2.

25. C.R.C., 1978 c.413. Annex 3.

(TAC)²⁶ for each stock and allocates that TAC through quotas. A TAC is set yearly for each of the two Gulf cod stocks and quotas are allocated among the different fishermen who are licensed to fish these stocks.²⁷ Quotas for the offshore fleet²⁸ are allocated in accordance with an "enterprise allocation" scheme under which each company or individual holding a licence is granted a specific share of each groundfish stock.²⁹ Inshore fishermen, on the other hand, operate under a global quota applicable to the whole of the inshore fishery. In 1985, over 80% of that part of the TAC for Gulf cod stocks reserved for Canadians was allocated to inshore fishermen.

24. In addition to regulating the fishery through the allocation of quotas, Canada regulates access of vessels to the Gulf fishery. This has had a major impact upon access by non-Gulf-based vessels to the groundfish fishery in the Gulf. In 1976 vessels over

26. The TAC for each stock is set in the light of scientific assessment and consultations with representatives of provincial governments and of the fishing industry. The criteria taken into account in determining the TAC include ensuring the size and stability of the fish population and the rebuilding of depressed stocks. Glossary, p. 81.

27. The quotas are set out in an annual groundfish management plan.

28. The "offshore fishery" is conducted by vessels over 100 feet (38.48m) in length, which fish beyond 12 miles from the shore. Glossary, p. 80.

29. Glossary, p. 76.

100 feet (30.48 m) were excluded from the Gulf redfish fishery,³⁰ which affected principally vessels based outside the Gulf. Since 1981 non-Gulf-based Canadian vessels over 1050 brake horsepower (b.h.p.)³¹ have been completely excluded from the cod fishery in the Gulf.³² The effect of these measures has been to reduce the gross registered tonnage³³ of Canadian offshore vessels (principally non-Gulf-based) with access to the Gulf cod fishery by 70% compared with the situation in 1971 (see Figure 6). Thus, the Gulf cod fishery has been preserved primarily for the benefit of the local Gulf-based fishery.

3. The Canadian Policy Relating to Factory Freezer Trawlers

25. The Canadian fishery has developed on the basis of wetfish trawlers³⁴ and, unlike distant water fishing States, Canada has never included factory

30. Atlantic Redfish Fishery Regulations, Order in Council P.C. 1976-465, February 26, 1976, SOR/76-168. Northwest Atlantic Fisheries Regulations, amendment, Order in Council P.C. 1976-1687, June 30, 1976, SOR/76-406. Annexes 17 and 18.

31. "Brake horsepower" (b.h.p.) is a measurement of power delivered by an engine. The limit of 1050 b.h.p. used in Canadian fisheries management distinguishes the more mobile from the less mobile vessels. Glossary, p. 76.

32. Atlantic Fishery Regulations 1985, *supra*, note 22, s. 89. Annex 15.

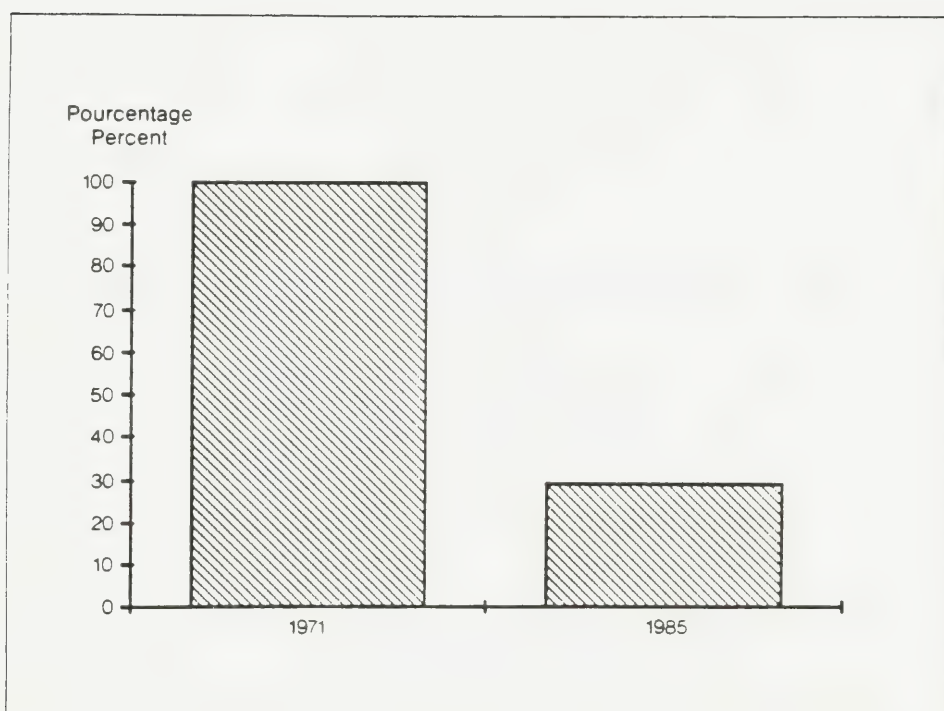
33. The "gross registered tonnage" of a vessel consists of its total interior volume expressed in units of 100 cubic feet or 2.83 cubic metres. Glossary, p 77.

34. A "wetfish trawler" is a fishing vessel that preserves its catch on board by stowage in ice. Glossary, p. 82.

Figure 6

Jauge brute des chalutiers hauturiers canadiens autorisés à pêcher la morue dans le golfe en 1971 et en 1985

Gross Registered Tonnage of Canadian Offshore Trawlers With Access to the Gulf Cod Fishery: 1971 and 1985



Source: Liste des bâtiments de pêches établie par l'ICNAF (1971) et données du ministère des Pêche et des Océans (1985)
ICNAF List of Fishing Vessels, 1971 and Department of Fisheries and Oceans 1985 data

freezer trawlers in its offshore fleet. In 1977 the Department of Fisheries and Oceans and National Sea Products Limited chartered a factory freezer trawler, registered in the Federal Republic of Germany, for a six-month experimental period.³⁵ The vessel was authorized to harvest both traditional and non-traditional species.³⁶ The results of this experiment were regarded as inconclusive³⁷ and subsequent applications by Canadians for licences to operate factory freezer trawlers for the harvesting of traditional groundfish species³⁸ were denied. In 1979 the Minister of Fisheries and Oceans confirmed that the denial of such licences for the harvesting of traditional groundfish species would be continued.³⁹

35. Discussion Paper, Factory Freezer Trawlers, Department of Fisheries and Oceans, August 1985, p. 3. Annex 19.

36. "Non-traditional species" are those species for which there has never been a significant Canadian offshore fishery e.g., silver hake, argentine, squid, mackerel and grenadier, Glossary, p. 80.

37. Op. cit. supra, note 35, pp.3-4. Annex 19.

38. "Traditional groundfish species" are species for which there has been a significant Canadian offshore fishery. They include cod, haddock, redfish, pollock, turbot and flatfish. Glossary, p. 82.

39. "Set Policy for Licensing Freezer Trawlers," November 30, 1979. Annex 20. Although there has been no specific prohibition of the filleting at sea of non-traditional species, few licences have been issued for such filleting. In 1984, a 65 foot (19.8m) inshore shrimp vessel was authorized to fillet its groundfish by-catch, as a pilot project, while operating in the Gulf. The project was, however, never implemented.

26. A new experiment with the use of factory freezer trawlers has recently been announced. On November 8, 1985 the Minister of Fisheries and Oceans stated that three factory freezer trawler licences would be made available for an experimental 5-year period.⁴⁰ The licences are to be issued subject to conditions designed to "protect the interests of inshore fishermen, fish processors and others involved in the groundfish industry in Atlantic Canada."⁴¹ The conditions to be imposed on these licences reflect several of the central principles of Canadian fisheries management, including restricting growth in the offshore fleet, minimizing conflicts between offshore and inshore fishermen, and avoiding putting pressure on resources through increased fishing capacity. Thus, a factory freezer trawler operating under an experimental licence may not fish in the Gulf of St. Lawrence or in the Bay of Fundy.⁴² In both of these areas the inshore fishery predominates and the increase in capacity from the introduction of factory freezer trawlers would put excessive pressure on limited resources.

40. "Three Factory Freezer Trawler Licences Approved," November 8, 1985. Annex 21.

41. "Statement by the Honourable John C. Crosbie, Minister of Justice and Attorney General Re the Factory Freezer Trawler Licences," November 8, 1985, p. 1. Annex 22.

42. Op. cit. supra, note 40, p. 3, condition 4 and "Factory Freezer Trawlers, Questions and Answers," no. 6. Annex 21.

27. Factory freezer trawlers are highly controversial in the Atlantic provinces of Canada. They are associated historically with overfishing, particularly in the Gulf, by large foreign fleets and they are perceived as a threat to the traditional Canadian inshore fishery and to the land-based processing industry. It was because of these concerns that the Minister of Fisheries and Oceans in making his announcement on the experimental licensing of factory freezer trawlers, reiterated a fundamental tenet of Canadian fisheries policy: "The inshore small boat fishery and the wetfish trawler fishery will continue to be the backbone of the Atlantic groundfish industry."⁴³

4. The Saint-Pierre-et-Miquelon Fishery

28. The islands of Saint-Pierre-et-Miquelon are located near the southern shore of Newfoundland, 143 nautical miles from the Gulf of St. Lawrence (see Figure 1). Coastal fishing is carried out in small boats and offshore fishing in trawlers. These trawlers benefit from an ice-free port located outside the Gulf. Unlike the Canadian trawlers based in the Gulf, Saint-Pierre-et-Miquelon trawlers can fish in the winter and spring inside the Gulf in Cabot Strait.⁴⁴

43. Op. cit. supra, note 40, p. 1. Annex 21.

44. See supra, para. 17, p. 10.

29. Trawler fishing from the islands began in 1952 with the creation of the Société de Pêche et de Congélation (SPEC), which gradually built up a small fleet of trawlers registered in Saint-Pierre-et-Miquelon, fluctuating from one to five vessels. The Société Saint-Pierraise de pêche (Interpêche) took over from the SPEC in 1974.⁴⁵ A subsidiary of three companies in metropolitan France,⁴⁶ Interpêche also operates the fleet of trawlers which supplies "la seule véritable usine de traitement du poisson" in Saint-Pierre, also operated by Interpêche. This plant processes virtually all of the fish caught off the islands,⁴⁷ providing employment for about 200 people.⁴⁸

45. "Les îles Saint-Pierre et Miquelon, Éléments de la situation économique générale," in the series "Avis et rapports du Conseil économique et social," Journal officiel de la République française, no. 9, March 12, 1974, p. 532. Annex 23.

46. The Société navale caennaise, the Compagnie des entrepôts et gares frigorifiques and the Société nouvelle de pêches lointaines. The annual reports of the first of these for 1983 and 1984 state that it provides Interpêche with administrative management services. Annexes 24 and 25.

47. Institut d'émission des départements d'Outre-Mer: Exercice 1984, Rapport d'activité, Saint-Pierre et Miquelon. Paris, 1984, p. 11. Annex 26. Unofficial translation: "the only real fish processing plant."

48. "A Saint-Pierre-et-Miquelon, Deux cents ouvriers contraignent le préfet à quitter l'île de Saint-Pierre," Le Monde, no. 12468, March 1, 1985. Annex 27.

30. The Saint-Pierre-et-Miquelon trawlers do not appear to have fished in the Gulf of St. Lawrence before 1960.⁴⁹ From 1960 to 1972 their groundfish catch in the Gulf never accounted for more than 42% of their overall groundfish catch, (i.e., both within and beyond the Gulf.)⁵⁰ At the time of the signing of the 1972 Agreement this figure had dropped to a little less than

49. ICNAF Statistical Bulletin for 1952-1959, Volumes 1 to 9. In view of the number involved, ICNAF and NAFO Bulletins have not been reproduced. However, they will be provided to the Tribunal and to the Agent for France if requested.

50. Annex 28, Table 1. For 1960 to 1978 (Volumes 10 to 28), see the ICNAF Statistical Bulletin and, for 1979 to 1982 (Volumes 29 to 32), its successor, the NAFO Statistical Bulletin, which indicate that the trawlers registered in Saint-Pierre-et-Miquelon had very small catches of species other than groundfish in the Gulf. As to cod, the principal groundfish caught in the Gulf by the trawlers registered in Saint-Pierre-et-Miquelon, both in terms of value and volume this figure never exceeded 50% until 1972. This fifty-fifty ratio between fish caught within the Gulf of St. Lawrence and that caught outside it also characterizes the relationship between the groundfish catch of trawlers registered in Saint-Pierre-et-Miquelon in the Gulf and the overall catch of groundfish for the islands, that is, for all fishing vessels registered there, including trawlers and coastal fishing boats, both within the Gulf and outside it. Until 1972 this ratio was never more than 40%. Annex 28, Table 3.

7% (224 tonnes).⁵¹ The groundfish fishery for these trawlers was located almost exclusively outside the Gulf of St. Lawrence. Although the Saint-Pierre-et-Miquelon Gulf groundfish catch has since increased considerably, in 1982 it was still only slightly more than 42% of the total trawler groundfish catch.⁵² The groundfish catch of these trawlers is divided almost equally between the catch within the Gulf and beyond, although the catch beyond the Gulf continues to be larger.

31. The groundfish catch being taken in the Gulf by the trawlers registered in Saint-Pierre-et-Miquelon is quite small compared with the total French catch, (i.e., that of both Saint-Pierre-et-Miquelon trawlers and vessels registered in metropolitan France). Before

51. See Annex 28, Table 1. In 1972, Saint-Pierre-et-Miquelon trawlers caught only 72 tonnes of cod in the Gulf, or 9.5% of their total cod catch. In relation to the overall groundfish catch for the islands, the catch in the Gulf was only slightly more than 5%. See Annex 28, Table 3.

52. See Annex 28, Table 1. For cod, the corresponding percentage in 1982 was 48. Thus in relation to the total groundfish catch for the islands, the catch in the Gulf would be slightly below 38%. 1982 is the last year for which complete statistics are available. Although in December 1985 NAFO received French data for 1983 and 1984, this did not meet NAFO requirements as it was not broken down by class of vessel tonnage and it did not distinguish between Saint-Pierre-et-Miquelon and metropolitan France.

1972 it was never more than 14% of the French catch.⁵³ At the time of signing of the 1972 Agreement the figure was as low as 1%⁵⁴ and was thus only a very small portion of the overall French fishery in the Gulf. The share of the islands has gone up as a result of an increase in their catch, but by 1982 it was still slightly less than 20% of the total French groundfish catch in the Gulf (see Figure 7).⁵⁵ The greatest part of the catch is still taken by vessels registered in metropolitan France.

32. From its beginning in 1952 until 1972, the offshore fleet of Saint-Pierre-et-Miquelon included only side trawlers which, in 1967, the French government promised to replace with stern trawlers.⁵⁶ The first stern trawler CROIX-DE-LORRAINE was put in service in 1973 and was soon joined by GOËLETTE in 1974 and LA NORMANDE in 1975. These three trawlers are similar in size to Canadian offshore trawlers with access to the cod fishery in the Gulf, and were the only trawlers

53. Until 1972, the figure for cod was never more than 8%.

54. In 1972, cod caught in the Gulf by Saint-Pierre-et-Miquelon trawlers never exceeded 0.3% of the French catch in this zone.

55. Figure 7 reflects the data contained in Annex 28, Table 2. The corresponding percentage for cod in 1982 was 19.3.

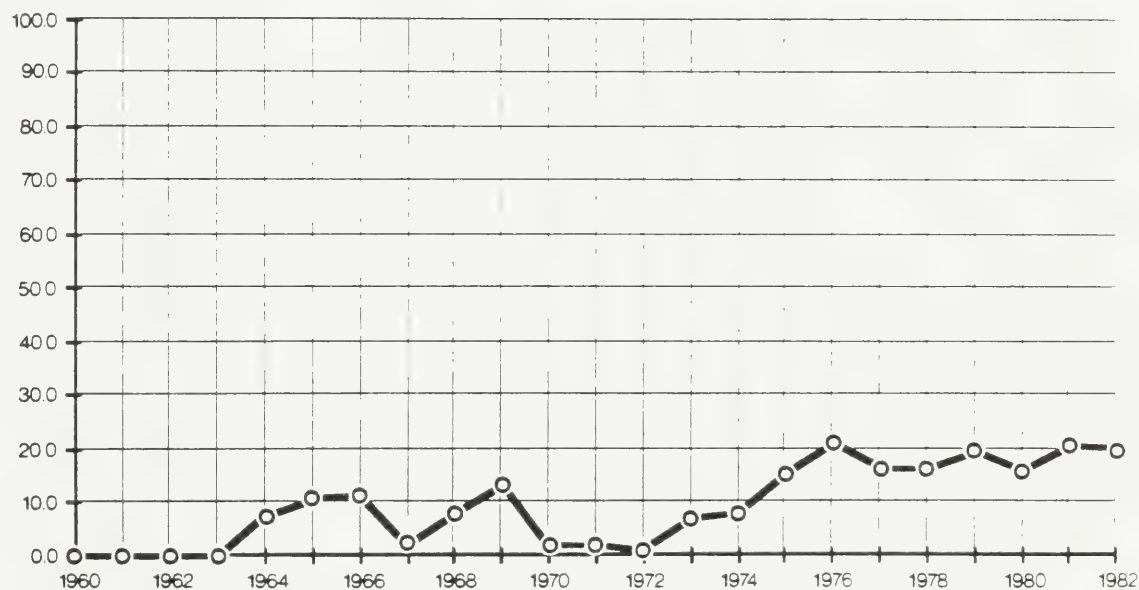
56. "Le voyage du général de Gaulle à Saint-Pierre-et-Miquelon," Le Monde, No. 7005, July 22, 1967. Annex 29.

Figure 7

Part des chalutiers de
Saint-Pierre-et-
Miquelon dans le total
des prises françaises
de poisson de fond
dans le golfe

French Gulf Groundfish
Catch: Percentage
Taken by Saint-Pierre-
et-Miquelon Trawlers

Pourcentage
Percent



Source: Bulletins statistiques de
l'ICNAF et de la NAFO,
Volumes 10 à 32
ICNAF and NAFO Statistical
Bulletins, Volumes 10 to 32

registered in Saint-Pierre-et-Miquelon until 1984. Like their predecessors they are wetfish trawlers. Each has a crew of about fifteen⁵⁷ and fishes almost as much within the Gulf as without.

33. In 1984 the factory freezer trawler LA BRETAGNE was registered in Saint-Pierre-et-Miquelon, followed by another wet fish trawler, MARMOUSET in 1985. Thus there are presently four wet fish trawlers and one factory freezer trawler registered in Saint-Pierre-et-Miquelon.

34. From the development of the Saint-Pierre-et-Miquelon groundfish fishery in the Gulf from 1960 to the present, the following conclusions can be drawn. First, the main benefit derived from the operation of these trawlers by the people of the islands is the employment that they generate, both in terms of the fishermen that they hire and employees in the fish processing plant. Second, although it has increased since 1972, the volume of groundfish caught in the Gulf by these trawlers is still limited - the largest catch

57. According to the NAFO List of Fishing Vessels, 1983, CROIX-DE-LORRAINE measures 46 metres and has a horse power of 1,600, while GOËLETTE and LA NORMANDE each have a length of 50 metres and 2,000 horse power. The same document states that the crew of the first numbers 14 and that of the two others, 15. Dartmouth, Canada, 1985, p. 28. Annex 30.

continues to be taken by vessels registered in metropolitan France. Third, as a rule these trawlers take slightly more than half of their catch outside the Gulf.

B. The Factory Freezer Trawler LA BRETAGNE

35. The factory freezer trawler LA BRETAGNE was launched on October 17, 1984 at the Saint Malo works of Ateliers et Chantiers de la Manche⁵⁸ and is owned by shareholders in metropolitan France and Saint-Pierre-et-Miquelon. Interpêche has an absolute majority of the shares.⁵⁹ LA BRETAGNE replaced, in the French fishing fleet of the Northwest Atlantic, the NEVE, a factory

58. La pêche maritime, no. 1279, October 20, 1984, p. 547. The same article states that the length of LA BRETAGNE is "inférieure à 50m (49,95m) pour avoir acces aux eaux canadiennes." Unofficial translation: "less than 50 m (49.95 m) for the purpose of gaining access to Canadian waters." A subsequent issue of the same publication (No. 1281, December 20, 1984) gives a complete description of the vessel (pp. 708-709), stating that this factory freezer trawler is intended for permanent use on the Newfoundland banks and the factory on board is "essentiellement destinée au traitement de la morue." Unofficial translation: "designed mainly for the processing of cod." Annexes 31 and 32.

59. See list of "quirataires" at Annex 33. The Lexique de termes juridiques, Dalloz, Paris, 1985, p. 365 defines "quirataire" as "un propriétaire d'une part dans un navire acheté en copropriété." Unofficial translation: "the owner of one share in a vessel purchased jointly."

freezer trawler registered in metropolitan France. LA BRETAGNE inherited the NEVE's metropolitan French crew.⁶⁰

36. The catch filleted on board LA BRETAGNE is unloaded in Saint-Pierre and placed in temporary cold storage before being exported to metropolitan France.⁶¹ Thus, unlike the wetfish trawlers registered in Saint-Pierre-et-Miquelon, but like the factory freezer trawlers registered in metropolitan France, LA BRETAGNE does not supply the Interpêche plant. In 1985 this set off a dispute between the Interpêche plant workers and the dock workers in the port of Saint-Pierre. Unable to process the catch, the plant workers insisted on unloading the vessel, as they do the Interpêche wetfish trawlers, while the dock workers claimed that the

60. Chaigneau, C., Deputy: Les relations franco-canadiennes dans le domaine de la pêche. Association interparlementaire "France-Canada", Assemblée Nationale, Paris, June 21, 1984, p. 3. Annex 34.

61. Institut d'émission des départements d'Outre-Mer: Saint-Pierre & Miquelon, pp. 7 and 9. Annex 35.

finished product on board LA BRETAGNE constituted a normal freight cargo which they should unload.⁶²

37. LA BRETAGNE is quite different from the trawlers that to date have made up the offshore fleet of Saint-Pierre-et-Miquelon since like the other factory freezer trawlers registered in metropolitan France, it fillets its catch at sea. It can, therefore, hold a larger quantity of fish and remain at sea longer. Thus LA BRETAGNE has a higher fishing capacity than the trawlers presently fishing out of Saint-Pierre-et-Miquelon, which has implications for the future application of Article 4(b) of the 1972 Agreement. The development of a fleet of factory freezer trawlers fishing in the Gulf might pave the way for catches significantly in excess of those anticipated by the Parties to the Agreement.

62. Tizon, J.-P., Senator: Rapport fait au nom de la Commission des Lois constitutionnelles, de Législation, du Suffrage universel, du Règlement et d'Administration générale, sur le projet de loi, adopté par l'Assemblée Nationale, relatif au statut de l'archipel de Saint-Pierre-et-Miquelon. Senate Document No. 246, Second Ordinary Session of 1984-1985, Vol. I, p. 33, April 17, 1985. Annex 36. See also op. cit. supra, note 48, Annex 27.

C. The 1972 Agreement

1. The Negotiation of the 1972 Agreement

(a) Background

38. The chronic overfishing in the Northwest Atlantic led to action by Canada to preserve the fishery in the Gulf of St. Lawrence and elsewhere off its coasts. In the 1950s and 1960s vessels from France, the United States, the United Kingdom, Denmark, Norway, Italy, Portugal and Spain were all fishing within the Gulf. Interference by the larger distant water trawlers with the gear of the inshore fishermen and pressure on stocks led to calls for the exclusion of foreign fishing off the Canadian coasts.⁶³

39. In the wake of the failure of the United Nations Conferences on the Law of the Sea in 1958 and 1960 to establish a fixed limit for the territorial sea, or to provide for the establishment of an exclusive fishery zone by the coastal state, Canada introduced

63. In 1963, the Fisheries Council of Canada, an association of representatives of the commercial fishing industry of Canada said: "It is our opinion that unless Canada takes immediate action to protect and conserve the marine fishery resources, they will be rapidly depleted by reason of the incursion of foreign fishing fleets." A Brief Concerning Canada's National and Territorial Waters Submitted to the Government of Canada. Ottawa, January 28, 1963, p. 1. Annex 37.

legislation setting its own limits for the territorial sea and establishing an exclusive fishing zone.⁶⁴ The Territorial Sea and Fishing Zones Act, 1964,⁶⁵ provided for a 3-mile territorial sea and a 9-mile fishing zone, in which fishing was to be reserved for Canadian fishermen. Negotiations were then entered into with States already fishing in Canadian waters.⁶⁶

40. France was one of the countries affected by the extension of Canadian fisheries jurisdiction. In particular, under the terms of the 1904 Convention between France and Great Britain, France had a right to fish "in the territorial waters on that portion of the coast of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north" on "a footing of equality with British subjects."⁶⁷

41. There were two sets of negotiations between Canada and France dealing with fishing rights in the Gulf of St. Lawrence, the first in 1964 and the second

64. Gotlieb, A.E.: "The Canadian Contribution to the Concept of a Fishing Zone in International Law." Canadian Yearbook of International Law, Vol. 2, 1964, p. 55 at pp. 73-74. Annex 38.

65. S.C. 1964-65, c. 22. Annex 39.

66. In 1964, Canada held discussions with the United States, France, Britain, Norway, Denmark, Spain, Portugal and Italy.

67. Convention between the United Kingdom and France Respecting Newfoundland, and West and Central Africa, signed at London, April 8, 1904. Annex 40.

in 1971. No agreed procès-verbaux were kept of these negotiations. There were, however, reports prepared by the Canadian delegation following the 1964 negotiations⁶⁸ and a record of the 1971 negotiations kept by the Canadian participants.⁶⁹ Although neither of these constitutes formal travaux préparatoires they do reflect what was said in the negotiations, what Canada intended, and what Canada understood France to have intended.

(b) The 1964 Canada-France Negotiations

42. Discussions with France took place in April and July 1964. France introduced in these discussions the idea of a provision for Saint-Pierre-et-Miquelon, in a draft presented at the July negotiations, in the following terms:

En raison de la situation géographique de Saint-Pierre et Miquelon et à titre d'arrangement de voisinage, les embarcations de pêche côtière et les chalutiers de pêche au large immatriculés à Saint-Pierre et Miquelon bénéficient,

68. "Preliminary Talks With France - April 7-8, 1964."
"Law of the Sea Talks with France, Second Round,
Paris, July 20-22, 1964." Annexes 41 and 42.

69. "Fisheries Phasing-Out Negotiations: France, First
Round of Talks, May 19-21, 1971." Annex 43.

en outre du droit de fréquenter leurs
lieux de pêche traditionnels.⁷⁰

There were, according to the French, 5 trawlers registered in Saint-Pierre-et-Miquelon, which fished in the Gulf alongside metropolitan vessels and in the bays of the south coast of Newfoundland, in particular Trepassey and Placentia Bays. France wanted the right to be able to continue this fishery.⁷¹

43. In respect of the Saint-Pierre-et-Miquelon trawlers, the Canadian negotiator, Mr. Wershof, who referred to concerns in Canada about "rumoured plans for the expansion of fishing installations on St. Pierre," asked:

What guarantee could there be, for instance, that metropolitan trawlers disguised as local or even trawlers manned by foreign crews but registered in St. Pierre might not take advantage of any privilege which Canada might be willing to concede but only in favour of authentic St. Pierre vessels?⁷²

70. Unofficial translation: "In view of the geographic situation of Saint-Pierre-et-Miquelon and as an arrangement between neighbours, coastal fishing boats and offshore trawlers registered in Saint-Pierre-et-Miquelon shall also be entitled to frequent their traditional fishing grounds." "Avant-Projet d'accord sur les pêches," July 20, 1964, p. 2, art. 6. Annex 44.

71. "Law of the Sea Talks with France, Second Round, Paris, July 20-22, 1964," p. 13-14, paras. 40 and 42. Annex 42.

72. Id., p. 14, para. 41. Annex 42.

The French negotiator, M. Leduc, did not envisage that this would occur at all. He stated that he "wished to reassure the Canadian authorities that the French Government was not seeking favours for other than St. Pierre et Miquelon fishermen," and he went on to say that "the Canadian concern over the possibility of overt or concealed abuses might be allayed by specifying in the agreement both the quantity and the quality of the vessels concerned."⁷³

44. On November 30, 1964 France, which had agreed to provide Canada with information on the plans for expansion of the fishing industry at Saint-Pierre, forwarded a note on the "projets de développement de Saint Pierre et Miquelon." This described a plan "destiné à remédier à la stagnation économique du territoire en modernisant ses installations portuaires."⁷⁴ The note also provided:

En ce qui concerne enfin le développement de la flotte Saint Pierraise, il n'est envisagé aucune modification au rythme actuel qui est approximativement d'un chalutier nouveau tous les trois ans - ce qui porterait leur nombre de 5 à 10 en quinze ans. Mais entre temps les bâtiments actuellement en service auront considérablement vieilli.

73. Id., p. 14, para. 42. Annex 42.

74. French diplomatic note of November 30, 1964, Doc. No. 3, p. 1. Annex 45. English translation prepared by Canadian authorities at the time the note was received: "to remedy the economic stagnation of this territory through modernizing its harbour facilities."

Il s'agit de bâtiments d'un rayon d'action et d'une capacité limités, longs de 28 à 38m; et dont l'équipage, conformément à la réglementation en vigueur dans les territoires d'Outre Mer, doit être à plus de 50% français.

Le nombre de doris en service (environ 150) n'est pas susceptible de variations notables.⁷⁵

45. The statement of the "projets de développement de Saint Pierre et Miquelon" provides an important basis for understanding the subsequent negotiations in 1971 and the inclusion of Article 4(b) in the 1972 Agreement. The "projets de développement" provided a further assurance that a special provision for the Saint-Pierre-et-Miquelon trawler fleet would not be a device for the expansion of the metropolitan fleet. Any such provision would be genuinely for the benefit of the fishermen of those islands.

75. Id., p. 3. Annex 45. English translation prepared by Canadian authorities at the time the note was received: "As regards the development of the St. Pierre fleet, no change is expected in the present rate of increase, which is approximately one new trawler every three years, thus bringing up the total of trawlers from five to 10 in 15 years. By that time, however, the vessels which are presently operating will have aged considerably.

The vessels in service are of limited range and capacity; their length varies from 28 to 38 meters and their crews, in conformity with the regulations for the Overseas Territories, must be more than 50 percent French.

The number of dories in operation (approximately 150) is not likely to vary to any significant extent."

46. Although further negotiations were tentatively scheduled for the autumn of 1964 they were postponed and ultimately never took place. French fishing was continued in accordance with the Coastal Fisheries Protection Regulations, whereby foreign nations with which negotiations had commenced were permitted to continue to fish in the new Canadian zone.⁷⁶

(c) The 1971 Canada-France Negotiations

47. In 1970 Canada introduced legislation that expanded the territorial sea to 12 miles and provided for the drawing of fisheries closing lines that would bring the whole of the Gulf of St. Lawrence within exclusive Canadian fisheries jurisdiction.⁷⁷ In explaining the amendment to the Territorial Sea and Fishing Zones Act that would permit this action, the

76. Pursuant to a Canadian commitment not to enforce Canadian laws in the newly created 9-mile fishing zone vis-à-vis the countries with which Canada was negotiating pending completion of negotiations, an Order in Council was passed under section 4 of the Coastal Fisheries Protection Act authorizing the fishermen of those countries to continue to fish in the fishing zone. Coastal Fisheries Protection Regulations, amended. Order in Council P.C. 1964-1112, July 17, 1964, SOR/64-275. Annex 46.

77. The fisheries closing lines were drawn across Cabot Strait and the Strait of Belle Isle. An Act to Amend the Territorial Sea and Fishing Zones Act, S.C. 1970, c. 68. Fishing Zones of Canada (Zones 1, 2 and 3) Order. Order in Council P.C. 1971-366, February 25, 1971, SOR/71-81. Annexes 47 and 9. See also supra, note 8.

Secretary of State for External Affairs, the Honourable Mitchell Sharp, made clear in the House of Commons that the objective was to phase all foreign fishing out of the Gulf. He said:

Following the establishment of Canada's new fishing zones we intend to conclude negotiations for the phasing-out of the fishing activities of the countries which have traditionally fished in the areas concerned, namely, Britain, Norway, Denmark, France, Portugal, Spain and Italy.

He then went on to say:

Apart from traditional fishing practices, the United States and France also have certain treaty rights off Canada's east coast, and these rights will of course be respected.⁷⁸

48. On March 9, 1971 Canada notified France and other countries fishing in its waters that the trawler exclusion rule, under which trawlers over 65 feet (19.8m) in length were prohibited from fishing within 12 miles of the shore, would be applied to the west coast of Newfoundland, within the Gulf and along part of the

78. House of Commons Debates, Official Report, April 17, 1970, Vol. VI, 1970, p. 6017. Annex 48.

south coast of Newfoundland.⁷⁹ Negotiations over French fishing off the Canadian coast, starting where negotiations had left off in 1964, were set for May 1971.

49. Canada intended, in the 1971 negotiations, to obtain French agreement to the phasing-out of French vessels from the Gulf.⁸⁰ France, for its part, was ready to accept that metropolitan vessels would be phased out of the Gulf, but it wanted some provision for future fishing by its metropolitan vessels elsewhere in Canadian waters. In addition, France wanted an arrangement that would allow Saint-Pierre-et-Miquelon trawlers to continue in the Gulf after the phasing-out of French metropolitan vessels. In this regard, France wanted separate provisions for trawlers from Saint-Pierre-et-Miquelon and vessels from metropolitan France.⁸¹

79. Canadian aide-mémoire of March 9, 1971. Annex 49. The "trawler exclusion rule" required trawlers over 65 feet (19.8m) in length to remain a specified distance from the nearest shore while fishing. The purpose of the rule was to protect the inshore fishery from interference, and particularly from gear damage, by offshore vessels. Between 1958 and 1970, a three-mile trawler exclusion was applied to the coast of Newfoundland. In June 1970, a 12-mile exclusion was made applicable to Newfoundland, but was not enforced until March 1971, and then only to the west coast of Newfoundland in the Gulf from Cape Ray to the Strait of Belle Isle, and along the southwest coast from Cape Ray to La Poile Bay. The rule was enforced within three miles of the shore along the remaining Newfoundland coast. Since May 1979, it has been enforced along the entire Newfoundland coast within twelve miles of the shore.

80. Op. cit. supra, note 69, p. 1. Annex 43.

81. Id., p. 2. Annex 43.

50. As far as the coastal fishing boats of Saint-Pierre-et-Miquelon were concerned, France simply wanted them to be able to continue their existing fishing practices, and was prepared to allow reciprocal rights to similar boats from Newfoundland.⁸² This was accepted by Canada and embodied in Article 4(a).

51. In respect of the Saint-Pierre-et-Miquelon trawler fleet the French negotiator, M. Girard, made clear that any increase in its catch would not be significant.⁸³ Although Canada suggested that, like the metropolitan fleet, the Saint-Pierre-et-Miquelon fleet should be subject to catch and effort limitations, M. Girard assured the Canadian side that a provision limiting the effort of Saint-Pierre-et-Miquelon trawlers was unnecessary. There was only a "small tonnage taken yearly" and "any increase would not be large enough to be an important factor."⁸⁴ Canada relied upon this assurance.

52. In the light of French representations about the Saint-Pierre-et-Miquelon trawler fleet, the Canadian delegation concluded that it could accept the continued presence of those trawlers in the Gulf. Those represen-

82. Ibid. Annex 43.

83. Id., p. 14. Annex 43.

84. Ibid. Annex 43. The limitation on species and effort level applicable to metropolitan vessels is contained in Article 5 of the 1972 Agreement.

tations had made clear that this provision for Saint-Pierre-et-Miquelon was an exceptional one that responded to the "special situation" and particular needs of Saint-Pierre-et-Miquelon and was intended to be limited in nature and effect.

53. In addition to the provisions relating to French fishing in Canadian waters, the Parties also agreed upon the maritime boundary between Saint-Pierre-et-Miquelon and Newfoundland (Article 8). Following the initialling of the agreement by the negotiators there were subsequent communications between the Parties on textual questions, including the English translation of "les embarcations de pêche côtière" in Article 4(a), and on the precise delimitation of the boundary.⁸⁵ The agreement was eventually signed on March 27, 1972 and entered into force on that date (see Figure 8).

2. Implementation of the 1972 Agreement

54. Between 1974 and 1977 French fishing in the Gulf was made subject to quotas. These quotas were established in 1974 for the 4TVn cod stock and in 1977 for the 4RS3Pn cod stock.⁸⁶ Following a dramatic

85. The other textual questions discussed concerned minor changes to Articles 6 and 10 of the Agreement, and points of translation related to Articles 1, 6 and 10.

86. Quotas were established for the 4TVn cod stock in 1974 through international consultation in ICNAF. Canada established quotas for 4RST redfish in 1976 and for the 4RS3Pn cod stock in 1977.

Figure 8

Secteurs du golfe dans
lesquels la France est
autorisée à pêcher en
vertu de l'Accord
de 1972

Areas in Which France
is Permitted to Fish in
the Gulf Under the 1972
Agreement



Limite de la pêche de la France
métropolitaine 61° 30' O
Limit of French Metropolitan
Fishing 61° 30' W



Zone de 12 milles interdite aux
chalutiers
12-Mile Trawler Exclusion Zone



Bâtiments de la France métro-
politaine (jusqu'au 15 mai 1986)
French Metropolitan Vessels
(until May 15, 1986)



Chalutiers de Saint-Pierre-et-
Miquelon
Saint-Pierre-et-Miquelon Trawlers

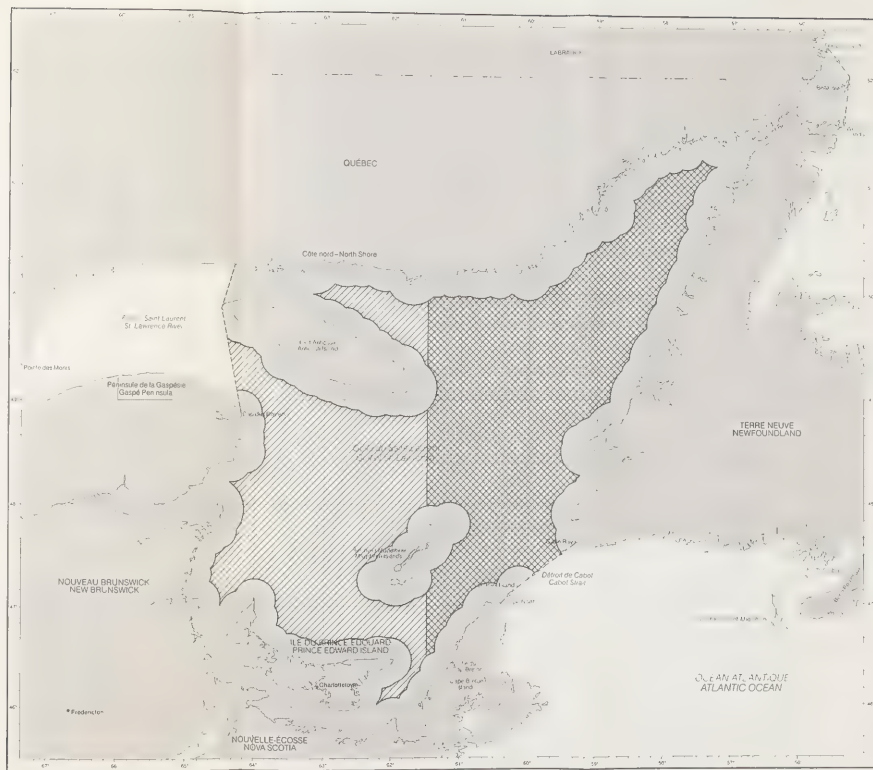


Limite occidentale du golfe
Western Limit of the Gulf



Lignes de fermeture de pêche
Fisheries Closing Lines

Projection de Mercator
Projection—Mercator
Échelle—1 : 3,193,000 à 47°32'N
Scale—1 : 3,193,000 at 47°32'N



decline in the Gulf redfish stock, French vessels, like large Canadian vessels, were excluded from fishing redfish in the Gulf during 1976.⁸⁷

55. Although there were differences between Canada and France each year over the proper basis for determining the French Gulf quota, there were no disputes over Saint-Pierre-et-Miquelon's rights in the Gulf under Article 4(b). Saint-Pierre-et-Miquelon trawlers fished in the Gulf, as did French metropolitan vessels, and the quotas provided to France between 1978 and 1980 contained separate allocations for Saint-Pierre-et-Miquelon trawlers for stocks other than cod.⁸⁸

56. In 1980, following further disagreements over the appropriate share of the Gulf groundfish catch to be allocated to France, a Procès-Verbal was concluded which established an annual quota for France in the Gulf to last until the end of 1986.⁸⁹ This quota was provided to France as a whole, including Saint-Pierre-et-Miquelon, and it was left to France to allocate between metropolitan and Saint-Pierre-et-Miquelon vessels.

87. See supra, pp. 14-15, para. 24.

88. Separate allocations for Saint-Pierre-et-Miquelon were made for redfish and, in 1979 and 1980, for 4Vn cod and witch flounder. Procès-Verbal, October 21, 1977. Procès-Verbal, November 3, 1978. Procès-Verbal, November 21, 1979. Annexes 50, 51 and 52.

89. Procès-Verbal, October 3, 1980. Annex 53.

57. The total annual quota in the Gulf for France under the 1980 Procès-Verbal was set at 20,500 tonnes of cod. As in previous years this quota was from the Gulf cod stocks, the 4RS3Pn stock and the 4TVn stock, both of which migrate outside the Gulf (see Figure 2). France was granted the right, during the continuance of the 1980 Procès-Verbal, to fish its allocation both within the Gulf and outside, in subdivisions 3Pn and 4Vn, in effect throughout the whole of the migratory range of the stocks.

58. France's fishery in the Gulf is conducted each year in accordance with a fishing plan authorized by Canada. France submits a proposed fishing plan for the forthcoming year for its fishery in Canadian waters. Technical discussions are held between French and Canadian fisheries officials prior to a formal fishing plan being authorized by Canada and communicated to France.⁹⁰

59. Each French vessel must apply to Canadian authorities for a Foreign Fishing Vessel Licence, in conformity with the Coastal Fishery Protection Regulations.⁹¹ The licence stipulates the area of operation of the vessel, the stock to be fished and the number of actual fishing days for that period of operation. The licence can be subsequently amended to extend

90. See Annex 54 for the French fishing plan for 1986.

91. C.R.C., 1978 c.413, ss. 6 and 7. Annex 3.

the number of days of fishing. Saint-Pierre-et-Miquelon trawlers are, like Canadian trawlers, granted annual licences. French metropolitan vessels must renew their licences every six months.

PART III

THE LAW

A. Introduction

1. The Issue

60. The issue in this arbitration is whether France has the right under the 1972 Agreement to operate LA BRETAGNE as a factory freezer trawler in the Gulf. This issue turns on the proper interpretation to be accorded to Article 4(b) of the 1972 Agreement, in the context of the Agreement as a whole, and in the light of its object and purpose.

2. The Basic Elements of the 1972 Agreement

61. There are four relevant elements of the 1972 Agreement:

First, the 1972 Agreement superseded all previous treaty provisions relating to French fishing off the Atlantic coast of Canada. France expressly renounced all rights under the 1904 Convention (Article 1). In return, Canada undertook, in the event of a modification to the juridical regime relating to waters beyond the territorial sea or fishing zones of Canada, to recognize the right of French nationals to fish in those waters

"subject to possible measures for the conservation of resources, including the establishment of quotas." A reciprocal right of Canadian fishing off the coast of Saint-Pierre-et-Miquelon was also granted (Article 2).

Second, provision was made for the phasing-out of French metropolitan vessels from the Gulf of St. Lawrence. The termination date for fishing by French metropolitan vessels within the Gulf was set at May 15, 1986 (Article 3).

Third, a special provision was made for Saint-Pierre-et-Miquelon in Article 4 as follows:

In view of the special situation of Saint-Pierre and Miquelon and as an arrangement between neighbours:

- (a) French coastal fishing boats registered in Saint-Pierre and Miquelon may continue to fish in the areas where they have traditionally fished along the coasts of Newfoundland, and Newfoundland coastal fishing boats shall enjoy the same right along the coasts of Saint-Pierre and Miquelon;
- (b) A maximum of ten French trawlers registered in Saint-Pierre and Miquelon, of a maximum length of 50 metres, may continue to fish along the coasts of Newfoundland, of Nova Scotia (with the exception of the Bay of Fundy), and in the Canadian fishing zone within the Gulf of St. Lawrence, on an equal footing with Canadian trawlers; Canadian trawlers registered in the ports on the Atlantic coast of Canada may continue to fish along the coasts of Saint-Pierre and Miquelon on an equal footing with French trawlers.

Fourth, it was provided in Article 6 of the 1972 Agreement that the French vessels referred to in Articles 3 and 4, were to be subject to Canadian fishery regulations applied on a non-discriminatory basis, and that French fishery regulations would be applied to Canadian vessels exercising reciprocal rights under Article 4. Three months notice of new regulations were to be provided by each party to the other.

3. Canada's Exclusive Right to Regulate the Gulf of St. Lawrence Fishery

62. Canada has the exclusive right in accordance with international law to conserve and manage the fishery resources of the Gulf of St. Lawrence and to regulate the fishery in those waters. France's rights in the Gulf derive solely from the 1972 Agreement. The 1972 Agreement supersedes all previous treaties relating to French fishing off the Atlantic coast of Canada and Article 6 formally acknowledges that French fishing in the Gulf is subject to Canadian fishing regulations. France renounced the "privileges established to its advantage" in the 1904 Convention.⁹²

92. Convention between the United Kingdom and France Respecting Newfoundland, and West and Central Africa, signed at London, April 8, 1904. Annex 40.

63. Canada's right to regulate the Saint-Pierre-et-Miquelon trawler fishery in the Gulf of St. Lawrence is qualified only by the "equal footing" provision of Article 4(b) which, along with Article 6, imposes an obligation not to discriminate. France can claim to be exempt from a regulation placed upon the Gulf fishery only if its application to Saint-Pierre-et-Miquelon vessels constitutes discrimination. Since the prohibition of the operation of factory freezer trawlers in the Gulf applies equally to Canadian and Saint-Pierre-et-Miquelon vessels, France's claim in this case in effect is for preferential, not equal, treatment. France wishes to apply Article 4(b) in a way that ignores the terms of the 1972 Agreement and the intentions of the Parties in the negotiation of that Agreement. The purpose of Article 4(b) was to continue a limited fishery for the benefit of the inhabitants of Saint-Pierre-et-Miquelon. France's claim in the present case is inconsistent with that purpose.

B. The Interpretation of the 1972 Agreement

64. The objective in interpreting a treaty is to find the common intention of the parties.⁹³ This intention is to be ascertained from the words used in

93. McNair: The Law of Treaties. Oxford, Clarendon Press, 1961, at p. 373: "We submit that the true duty of the judge is to search for the common intention of the parties in using the language of the text; in this process there are no short cuts; he must rely upon his judicial training and his common sense." Annex 55.

their context and in the light of the treaty as a whole, including the circumstances of its negotiation.⁹⁴ Any examination of the 1972 Agreement must seek to determine how, in 1972, the Parties would have viewed the question of the operation of a factory freezer trawler in the Gulf under Saint-Pierre-et-Miquelon registry pursuant to Article 4(b).

1. The Object and Purpose of the 1972 Agreement

- (a) The primary purpose of the 1972 Agreement was to phase French vessels out of the Gulf of St. Lawrence.

65. Canada's objective in relation to the Gulf was conservation and rational management of stocks that were threatened by overfishing and the protection of local coastal interests in the fishery. Thus, the purpose of the negotiations entered into with foreign States was the exclusion of large foreign vessels, which were generally factory freezer trawlers, from the Gulf. This, too, was the purpose of the 1971 negotiations with France.

66. Canada's approach was in line with that of other coastal States. Some, including France, had begun to phase foreign fishing out of their exclusive fisheries zones and to manage those zones in

94. Vienna Convention on the Law of Treaties, A/Conf. 39/11/Add. 2; Can.T.S. 1980, No. 37. Arts. 31 and 32. Annex 56.

the light of domestic interests.⁹⁵ There is no doubt that France fully understood Canada's objectives with respect to the Gulf.

67. The agreements negotiated by Canada with foreign countries all followed a similar pattern; they provided for a phase-out of fishing by those countries in the Gulf of St. Lawrence although the length of the phasing-out period differed.⁹⁶ The agreement with France had the same objective, but it provided for a significantly longer phasing-out period (15 years) for French metropolitan vessels in the Gulf than was given to any other State, and it provided for the continuation of a limited Saint-Pierre-et-Miquelon trawler fishery in the Gulf even after this phasing-out period.

95. In 1967 France excluded foreign vessels, with the exception of those exempted in accordance with the March 9, 1964 London Fisheries Convention, from fishing in a belt 12 nautical miles in width measured from the baselines of the territorial sea. Décret n° 67-451 du 7 juin 1967 portant extension de la zone de pêche interdite aux navires étrangers. This decree was made applicable to Saint-Pierre-et-Miquelon in 1973. Décret n° 73-161 du 19 février 1973 relatif à l'extension dans le territoire des îles Saint-Pierre et Miquelon du décret n° 67-451 du 7 juin 1967 portant extension de la zone où la pêche est interdite aux navires étrangers. Annex 57.

96. Phase-out agreements were concluded with the Governments of Denmark, France, Norway, Portugal, Spain and the United Kingdom. With the exception of French vessels and Faroese vessels fishing for porbeagle shark, all foreign fishing was phased out of the Gulf by December 31, 1976.

- (b) The right of Saint-Pierre-et-Miquelon trawlers to remain in the Gulf of St. Lawrence was an exception to the primary purpose of the 1972 Agreement

68. That part of Article 4(b) which allowed Saint-Pierre-et-Miquelon trawlers to remain in the Gulf even after the exclusion of the French metropolitan vessels on May 15, 1986, is a special, exceptional provision which derogates from the primary purpose of the 1972 Agreement. As such it must be interpreted strictly. The correct approach to interpretation in such circumstances was noted by the Permanent Court of International Justice in its advisory opinion on the Nationality Decrees issued in Tunis and Morocco,⁹⁷ when interpreting paragraph 8 of Article 15 of the Covenant of the League of Nations. The Court said that paragraph 8 "is an exception to the principles affirmed in the preceding paragraphs and does not therefore lend itself to an extensive interpretation."⁹⁸

69. The separate provision for Saint-Pierre-et-Miquelon was an acknowledgement by the Parties of the unique position of the islands. Unlike France, Saint-Pierre-et-Miquelon is situated just off the Canadian shore.⁹⁹ Its fishing fleet consists of coastal fishing

97. P.C.I.J., Series B, no. 4. Annex 58.

98. Id., p. 25. Annex 58.

99. Article 4 expressly acknowledges Saint-Pierre-et-Miquelon's status as a neighbour of Canada.

boats and a small fleet of trawlers¹⁰⁰ which do not travel great distances from their home port. The "special situation" of Saint-Pierre-et-Miquelon had been described in 1964 as "stagnation économique"¹⁰¹ and the separate provision for Saint-Pierre-et-Miquelon was intended to take this economic situation into account.

70. An interpretation of Article 4(b) inconsistent with the very purpose of the 1972 Agreement -- the phasing of the French metropolitan fishery out of the Gulf and the making of a special provision for the benefit of Saint-Pierre-et-Miquelon -- would defeat the common intention of the Parties when the 1972 Agreement was negotiated. Article 4(b) cannot be interpreted in the way that France proposes.

2. The Meaning of Article 4(b)

71. The correct approach to the interpretation of Article 4(b) starts from the fact of Canada's exclusive authority over the fishery in the Gulf of St. Lawrence. It takes account of the fact that a limited exception was made for Saint-Pierre-et-Miquelon trawlers to "continue to fish" in the Gulf on an "equal footing" with Canadian trawlers, and it recognizes that the bene-

100. See supra, p. 19, para. 28.

101. French diplomatic note of November 30, 1964, "Doc. No. 3: Note sur les projets de développement de Saint Pierre et Miquelon," p. 1. Annex 45. Translation prepared by Canadian authorities at the time the note was received: "economic stagnation."

fit of Article 4 was for the inhabitants of Saint-Pierre-et-Miquelon, and not metropolitan France.

72. Canada's understanding of France's intentions regarding Article 4(b) was formed in the light of the important and repeated assurances made by France during the 1964 and 1971 negotiations. These were:

- that a special provision was necessary for Saint-Pierre-et-Miquelon because of the situation of the islands, and their economic needs;¹⁰²

- that the Saint-Pierre-et-Miquelon catch in the Gulf was small and that any increase would be limited;¹⁰³

- that there was no need to provide in the Agreement for catch and effort limitations on the Saint-Pierre-et-Miquelon trawler fleet because of the "small tonnage taken yearly;"¹⁰⁴ and,

- that in seeking a special arrangement for Saint-Pierre-et-Miquelon fishermen and vessels France was not attempting to obtain disguised benefits for metropolitan vessels or for metropolitan fishermen.¹⁰⁵

102. "Law of the Sea Talks with France, Second Round, Paris, July 20-22, 1964," p. 14, para. 42. Annex 42.

103. "Fisheries Phasing-Out Negotiations: France, First Round of Talks, May 19-21, 1971," p. 14. Annex 43.

104. Ibid. Annex 43.

105. Op. cit. supra, note 102. Annex 42.

These assurances are important for an understanding of the common intention of the Parties.

- (a) Article 4(b) gives Saint-Pierre-et-Miquelon fishermen no greater rights than those enjoyed by Canadian fishermen

73. Article 4(b) grants Saint-Pierre-et-Miquelon trawlers a right to continue to fish "on an equal footing with Canadian trawlers." The concept of "equal footing" was intended to ensure equality of treatment in the prosecution of the fishery. Saint-Pierre-et-Miquelon trawlers were to be treated in the same way as Canadian trawlers. This was an arrangement between neighbours which recognized the similarity between the situation of the inhabitants of Saint-Pierre-et-Miquelon and that of the inhabitants of Canadian communities who fish in the Gulf.

74. The concept of "equal footing" does not appear to have been the subject of extended discussion in the 1971 negotiations. The term was apparently simply carried over from the 1904 Convention. The only reference to the concept in the Canadian record of the negotiations makes it clear, however, that the concept of "equal footing" related to the conditions of access to the fishery and not to the share of the catch.¹⁰⁶

106. Op. cit. supra, note 103, pp. 8-9. Annex 43.

75. The principle of "equal footing" in Article 4 (b) provides in effect for non-discrimination. A similar provision¹⁰⁷ has been described as a national treatment clause.¹⁰⁸ Such a clause provides for:

Une réciprocité 'abstraite' puisqu'on ne sait pas quel est exactement le traitement dans chaque pays; ce sera le traitement national certes, mais quel qu'il soit et si différent soit-il de l'un à l'autre des pays.¹⁰⁹

76. While ensuring that the treatment received shall be no worse than that accorded to Canadians, the "equal footing" principle does not grant any right to treatment better than that accorded to Canadians. When speaking of a non-discrimination clause, the Permanent Court of International Justice stated in the Treatment of Polish Nationals in Danzig¹¹⁰ case: "In the Court's opinion, however, the object of the prohibition [of discrimination] is to prevent any unfavourable treatment,

107. Convention of Friendship, Reciprocal Establishments, Commerce and for the Surrender of Fugitive Criminals between Switzerland and the United States, signed at Bern, November 25, 1850, Article I, in Miller: Treaties and other International Acts of the United States, vol. V, pp. 846-847. Annex 59.

108. J.-P. Niboyet: "La notion de réciprocité dans les traités diplomatiques de droit international privé." A.D.I. Recueil des Cours, Vol. 52, no. II, 1935, p. 258 at p. 293. Annex 60.

109. Id., p. 289. Annex 60. Unofficial translation: "an 'abstract' reciprocity, since one does not know exactly what the treatment is in each country; it will be national treatment, no matter what it is or how different it may be from one country to another."

110. P.C.I.J., Series A/B, no. 44. Annex 61.

and not to grant a special régime of privileged treatment."¹¹¹ Similarly, while a national treatment clause establishes a standard of treatment, it also places a limit on that treatment:

Cette clause constitue, d'autre part, le maximum de ce qu'un individu puisse réclamer: le traitement du national et par là l'absence de toute discrimination.¹¹²

77. Under the "equal footing" principle in Article 4(b), Saint-Pierre-et-Miquelon trawlers are entitled to continue to fish in the Gulf of St. Lawrence under the same conditions as those applicable to Canadian trawlers. Article 4(b) does not provide a preference for Saint-Pierre-et-Miquelon trawlers vis-à-vis Canadian trawlers.

78. Non-discrimination under the "equal footing" principle in Article 4(b) is complemented by the terms of Article 6(1);

Canadian fishery regulations shall be applied without discrimination in fact or in law to the French fishing vessels governed by Articles 3 and 4, including regulations concerning the dimensions of vessels authorized to fish less than 12 miles from the Atlantic coast of Canada.

111. Id., p. 29. Annex 61.

112. Op. cit. supra, note 108, p. 288. Annex 60.
Unofficial translation: "This clause constitutes, on the other hand, the maximum that an individual may claim: national treatment and thus the absence of any discrimination."

79. "Equal footing" in Article 4(b) presupposes a standard applicable to Saint-Pierre-et-Miquelon trawlers. That standard must be the standard applicable to Canadian trawlers in the Gulf. Canada, and Canada alone, has the exclusive right to manage the fishery in the Gulf. France's right is to have Saint-Pierre-et-Miquelon trawlers participate in that fishery in accordance with the principle of "non-discrimination." France can insist that the standards set by Canada not be discriminatory, but France cannot claim any exemption from those standards nor can it claim, directly or indirectly, the right to set the standards.

(b) Article 4(b) provides for the continuation of a limited Saint-Pierre-et-Miquelon trawler fishery

80. Article 4(b) provides that Saint-Pierre-et-Miquelon trawlers "may continue to fish" in the Gulf of St. Lawrence. The right to "continue to fish" means that Canada would permit the existing Saint-Pierre-et-Miquelon trawler fishery to continue. A limited expansion was provided for within the constraints of 10 trawlers up to 50 metres in length. This did not mean that another kind of fishery could be substituted for the existing Saint-Pierre-et-Miquelon Gulf fishery.

81. In 1971 the French negotiator, M. Girard, spoke of the fishery as something very limited in nature. The total catch of Saint-Pierre-et-Miquelon trawlers (inside the Gulf and outside) was said to be

about 6,000 tonnes per year.¹¹³ As far as their Gulf catch was concerned, it did not exceed 2,500 tonnes before 1968, and by 1972 it had dropped to 224 tonnes.

82. The French negotiator considered that "the level of the catch by fishermen from St. Pierre and Miquelon might go up in future" but he considered that "any increase would not be large enough to be an important factor."¹¹⁴ In this light the catch of the Saint-Pierre-et-Miquelon trawler fleet was regarded by both Parties as relatively modest and "not enough to put the Canadian fishery in jeopardy."¹¹⁵ Obviously M. Girard could not have had in mind the possibility of incorporating factory freezer trawlers into the Saint-Pierre-et-Miquelon fleet.

83. The very words of Article 4(b) suggest that factory freezer trawlers do not fall within its scope. The right granted was to a particular fleet to "continue to fish." The term "trawler" was used in Article 4(b) to describe vessels in the Saint-Pierre-et-Miquelon

113. Op. cit. supra, note 103, p. 2. Annex 43.

114. Id., p. 14. Annex 43.

115. Id., p. 2. Annex 43.

fleet, which did not include any factory freezer trawlers; the term "vessels" is used in Article 3 to describe the metropolitan fleet which did include factory freezer trawlers.¹¹⁶

84. Similarly, the limits that were placed on both the number and the length of the trawlers, although providing for some margin of growth, obviously were intended as limitations on the fishing capacity of the Saint-Pierre-et-Miquelon trawler fleet operating under Article 4(b). The 50-metre limitation encompassed all existing Saint-Pierre-et-Miquelon trawlers and it excluded the much larger metropolitan vessels. In sum, it is inconceivable that Canada would have contemplated at that time that Saint-Pierre-et-Miquelon would have developed a fleet of factory freezer trawlers, and even less likely that Canada would have accepted such a concept.

(c) Article 4(b) is intended for the benefit of Saint-Pierre-et-Miquelon, not metropolitan France

85. The chapeau to Article 4, "in view of the special situation of Saint-Pierre and Miquelon and as an

¹¹⁶. The French text (which was the working text of the negotiations) is explicit. In Article 4(a) the term "embarcations de pêche côtière" is used; in Article 4(b) Saint-Pierre-et-Miquelon trawlers are referred to as "chalutiers"; in Article 3 metropolitan French vessels are referred to as "bâtiments de pêche." In Article 6 of the Agreement which refers to the vessels in both Articles 3 and 4, the term "bateaux de pêche" is used as a generic term encompassing all kinds of vessels. The implication is that in each case, under Articles 3, 4(a) and 4(b), the parties had a different type of vessel in mind.

arrangement between neighbours" indicates the specific objective of Article 4. This was to provide something to benefit the inhabitants of Saint-Pierre-et-Miquelon. The preservation of a Saint-Pierre-et-Miquelon trawler fishery was a response to the "stagnation économique" referred to in the 1964 "projets de développement."¹¹⁷

86. The benefit contemplated under Article 4(b) has, in fact, been provided to Saint-Pierre-et-Miquelon. The groundfish catch of the Saint-Pierre-et-Miquelon trawlers in the Gulf has risen from 224 tonnes in 1972 to 3781 tonnes in 1982 (see Figure 9). This fishery has contributed to employment, both on board the trawlers and in the fish processing plant in Saint-Pierre. By comparison with Canadian fishermen based outside the Gulf of St. Lawrence, Saint-Pierre-et-Miquelon has been treated favourably.¹¹⁸

87. Canada's concern, expressed by Mr. Wershof in 1964, that any provision for Saint-Pierre-et-Miquelon

117. Op. cit. supra, note 101. Annex 45. Translation prepared by Canadian authorities at the time the note was received: "economic stagnation;" "scheme of development."

118. In particular, the restriction on non-Gulf-based vessels, excluding those with a b.h.p. greater than 1050 from fishing in the Gulf, has not been applied to Saint-Pierre-et-Miquelon vessels. Atlantic Fishery Regulations, 1985, Order in Council P.C. 1985-3662, December 19, 1985, SOR/86-21, s. 89. Annex 15.

Figure 9

Prises de poisson de
fond effectuées par les
chalutiers de Saint-
Pierre-et-Miquelon
dans le golfe de 1972
à 1982

Saint-Pierre-et-
Miquelon Trawler Gulf
Groundfish Catch:
1972 to 1982



Source: Bulletins statistiques de
l'ICNAF et de la NAFO,
Volumes 22 à 32
ICNAF and NAFO Statistical
Bulletins, Volumes 22 to 32

trawlers might be taken advantage of by French metropolitan vessels has already been noted. Privileges for Saint-Pierre-et-Miquelon vessels were intended, Mr. Wershof said, to apply only to "authentic St. Pierre vessels." His French counterpart, M. Leduc, assured the Canadian authorities that "the French Government was not seeking favours for other than St. Pierre et Miquelon fishermen."¹¹⁹ The benefit of Article 4(b) was intended for Saint-Pierre-et-Miquelon alone. Article 4(b) was not to be used as a covert means to benefit the metropolitan French fishery.

88. M. Leduc's assurance was central to Canada's acceptance in the 1971 negotiation of a special provision for Saint-Pierre-et-Miquelon and it provides an important basis for the interpretation and application of Article 4(b). To use Article 4(b) as a mechanism to provide a benefit for metropolitan fishing interests rather than to the inhabitants of Saint-Pierre-et-Miquelon would be a clear derogation from the principle that a treaty must be performed by the parties in good faith.¹²⁰

119. Op. cit. supra, note 102, p. 14, paras. 41-42.
Annex 42.

120. Vienna Convention on the Law of Treaties, supra, note 94, Art. 26: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

PART IV

THE IMPLICATIONS OF FRANCE'S CLAIM

89. France's claim to a right to operate a factory freezer trawler under Saint-Pierre-et-Miquelon registry in the Gulf is incompatible with the express wording of the "equal footing" provision in Article 4(b). The French claim also ignores the purpose of Article 4(b) which was to continue a limited fishery that would benefit the inhabitants of Saint-Pierre-et-Miquelon.

(a) France's claim would create a situation of inequality between Canadian and Saint-Pierre-et-Miquelon vessels in the Gulf

90. Canada's prohibition of filleting at sea is part of a fisheries policy designed to reflect the particular economic and social needs of the Canadian fishery and of the communities that depend upon that fishery. In 1972 France agreed that the Saint-Pierre-et-Miquelon trawlers fishing in the Gulf under Article 4(b) would be placed on the same basis as Canadian trawlers. This involved an implicit parallel between Saint-Pierre-et-Miquelon and comparable Canadian communities that fish in the Gulf. Once provided with this advantage, France cannot claim an exemption from fisheries regulations applicable to the inhabitants of Canadian fishing communities.

91. To allow Saint-Pierre-et-Miquelon to operate a factory freezer trawler in the Gulf of St. Lawrence when Canadians are prohibited from doing so would be discriminatory vis-à-vis those Canadians, in a situation intended to be governed by non-discrimination. The French would rightly be perceived as having more extensive rights than Canadians have in Canadian waters. Already Saint-Pierre-et-Miquelon enjoys certain advantages over Canadian Gulf fishermen.¹²¹ Any increase in these advantages would have social and political consequences for Canada's administration of its fisheries policies in the Gulf.

92. Canada manages the Gulf groundfish fishery according to the state of the resource and the economic and social needs of Canadian fishermen and of the communities that depend upon that resource. That is Canada's right, and Canada's exclusive right. France's claim in this case, in effect, requires Canada to manage the Gulf fishery in accordance with French, not Canadian, economic and social objectives.

(b) The introduction of a factory freezer trawler fleet would transform the fishery by Saint-Pierre-et-Miquelon registered vessels in the Gulf

93. In 1972 the Parties contemplated a limited Saint-Pierre-et-Miquelon fishery in the Gulf. Events

¹²¹. In addition to operating in the Gulf vessels in excess of 1050 b.h.p., Saint-Pierre-et-Miquelon fishermen operate out of an ice-free port. See supra, note 118, Annex 15, and p. 10, para. 17.

since then have demonstrated that it is a limited fishery in fact. The fishery has been conducted by three trawlers and the catch, while rising significantly, has remained a relatively small proportion of the total French catch in the Gulf. The extent of that catch has been regulated by France which determines the allocation of its quota in the Gulf between Saint-Pierre-et-Miquelon and metropolitan French vessels.

94. A modern factory freezer trawler enjoys advantages over the existing Saint-Pierre-et-Miquelon trawlers. A fleet of factory freezer trawlers operating in the Gulf under Saint-Pierre-et-Miquelon registry would transform the nature of the Saint-Pierre-et-Miquelon fishery into something significantly different from what the Parties intended in concluding the 1972 Agreement. It stands in contrast with the depiction in the 1964 "projets de développement" of a fleet "d'un rayon d'action et d'une capacité limités"¹²² and with M. Girard's concept of a limited trawler fleet whose increase in catch "would not be large enough to be an important factor."¹²³

122. Op. cit. supra, note 101, p. 2. Annex 45. Translation prepared by Canadian authorities at the time the note was received: "scheme of development;" "of limited range and capacity."

123. Op. cit. supra, note 103, p. 14. Annex 43.

95. The introduction of LA BRETAGNE has a particular significance at this time. After May 15, 1986 the catch that in the past has been taken by French metropolitan vessels will revert to Canadian fishermen. This was one of the objectives of phasing those vessels out of the Gulf. The development of a factory freezer trawler fleet under Saint-Pierre-et-Miquelon registry with the objective of operating in the Gulf has the appearance of reintroducing under Article 4(b) the French metropolitan fleet that is to be excluded from the Gulf under Article 3. This takes on a particular importance in view of the fact that quotas for 1987 and beyond have yet to be set for Saint-Pierre-et-Miquelon trawlers fishing in the Gulf under Article 4(b).

(c) The real benefit of the operation of LA BRETAGNE as a factory freezer trawler in the Gulf goes to metropolitan France, not to Saint-Pierre-et-Miquelon

96. According to the information available to Canada¹²⁴ there are serious doubts whether LA BRETAGNE would have been regarded in 1964 as an "authentic St. Pierre vessel,"¹²⁵ or considered by the negotiators in

124. On January 17, 1985 Canada made an initial inquiry about the criteria for registration of vessels in Saint-Pierre-et-Miquelon. Canadian aide-mémoire of January 17, 1985. French diplomatic note 144/DJ/JFD/DA of January 19, 1985. Canadian diplomatic note 0026 of January 24, 1985. Annexes 62, 63 and 64.

125. Op. cit. supra, note 102, p. 14, para. 41. Annex 42.

1971 as providing the benefit to Saint-Pierre-et-Miquelon contemplated by Article 4(b). LA BRETAGNE, which is majority-owned by French metropolitan interests, replaced a French metropolitan vessel and took over its crew (all of whom are resident in metropolitan France).¹²⁶ Unlike the three conventional trawlers operated under Saint-Pierre-et-Miquelon registry by Interpêche, LA BRETAGNE neither provides employment on board for Saint-Pierre-et-Miquelon residents nor supplies fish for the processing plant in Saint-Pierre, and thus it does not provide comparable employment opportunities on shore.¹²⁷ LA BRETAGNE operates for the benefit of metropolitan France, not Saint-Pierre-et-Miquelon. This is contrary to the express purpose of Article 4 of the 1972 Agreement.

126. See supra, pp. 24-25, para. 35

127. See supra, p. 25, para. 36.

PART V

SUMMARY OF PRINCIPAL CONCLUSIONS

97. The principal conclusions advanced in this Memorial may be summarized as follows:

1. Canada's exclusive right to manage the fishery in the Gulf of St. Lawrence is qualified only to the extent provided for in the 1972 Agreement.

2. The primary purpose of the 1972 Agreement was to phase French vessels out of the Gulf fishery. The exception for Saint-Pierre-et-Miquelon trawlers in recognition of the special situation of the islands as a neighbour of Canada, was granted on the basis of assurances by France. These assurances related to the limited nature of the Saint-Pierre-et-Miquelon Gulf fishery and to France's objective which was to provide some benefit to Saint-Pierre-et-Miquelon.

3. Interpreted in good faith, in accordance with its purpose, and with the object and purpose of the Agreement as a whole, Article 4(b):

(a) grants Saint-Pierre-et-Miquelon trawlers no greater rights than those enjoyed by Canadian trawlers;

(b) provides for the continuation of a limited Saint-Pierre-et-Miquelon trawler fishery in the Gulf; and

(c) applies for the benefit of the inhabitants of Saint-Pierre-et-Miquelon, not metropolitan France.

4. France's claim to a right to operate LA BRETAGNE as a factory freezer trawler in the Gulf is contrary to the letter and spirit of the 1972 Agreement:

(a) Saint-Pierre-et-Miquelon registered trawlers in the Gulf would not be on an "equal footing" with Canadian trawlers, they would be accorded preferential treatment;

(b) the nature of the Saint-Pierre-et-Miquelon fishery in the Gulf would be transformed into something significantly different from what the Parties intended in concluding the 1972 Agreement;

(c) the real benefit of the operation of LA BRETAGNE as a factory freezer trawler in the Gulf goes to metropolitan France, not to

Saint-Pierre-et-Miquelon as intended under the 1972 Agreement.

5. France has no right, therefore, under the 1972 Agreement to operate LA BRETAGNE as a factory freezer trawler in the Gulf.

PART VI

SUBMISSIONS

In view of the facts and arguments set out in this Memorial, the Tribunal is requested to adjudge and declare:

- (a) that Saint-Pierre-et-Miquelon registered trawlers engaged in the Gulf fishery pursuant to Article 4(b) of the 1972 Agreement are entitled to be treated by Canada on an equal footing with Canadian trawlers but are not entitled to preferential treatment;
- (b) that Article 4(b) provided for the continuance of only a limited Saint-Pierre-et-Miquelon fishery in the Gulf exercised in a way that would benefit the inhabitants of Saint-Pierre-et-Miquelon;
- (c) that LA BRETAGNE does not have the right to operate as a factory freezer trawler in the Gulf of St. Lawrence.

February 22, 1986

Philippe Kirsch
Agent for the Government
of Canada

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List of Annexes

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GLOSSARY OF TERMS

GLOSSARY OF TERMS

Brake Horsepower:

A measurement of power delivered by an engine. The limit of 1050 b.h.p. used in Canadian fisheries management distinguishes the more mobile from the less mobile vessels. (puissance au frein)

By-Catch:

Species of fish caught incidentally when pursuing a directed fishery for another species. (prise accessoires)

Directed Fishery:

A fishery targeted at a particular species. (pêche sélective)

Division:

See ICNAF/NAFO area (division).

Dory:

A rowboat with a flat bottom and high sides, used for fishing. (doris)

Enterprise Allocation:

Allocation of a particular groundfish stock assigned to an individual or a company as opposed to an overall quota that is fished by many fishermen competitively. (allocations d'entreprises)

Factory Freezer Trawler:

A fishing vessel that can fillet and freeze its catch on board into a form ready for market. It is

essentially a floating fish plant. (chalutier-usine congélateur)

Filleting:

A method of processing a fish in which strips of flesh are cut parallel to the vertebral column of to yield a market-ready product. (filetage)

Fisheries Closing Lines:

Straight lines used to enclose the areas designated by Canada in 1971 as fishing zones of Canada. (See Figure 1 and Annex 9). The fisheries closing lines for the Gulf of St. Lawrence (Fishing Zones of Canada, Zone 1) cross Cabot Strait from Money Point to Cape Ray passing by St. Paul Island, and they cross the Strait of Belle Isle from Eastern White Island passing by the Northeast Ledge off Belle Isle to Double Island. (lignes de fermeture des pêches).

Gross Registered Tonnage:

Total interior volume of a vessel measured in units of 100 cubic feet or 2.83 cubic metres. (jauge brut)

Groundfish:

The collective term used to describe species that feed on or near the ocean bottom. The principal species include cod, haddock, redfish, pollock and flatfish species (e.g., turbot and witch flounder). (poisson de fond)

Gulf-Based Vessels:

Vessels with a home port in the Gulf of St. Lawrence. (bateaux basés dans le golfe)

Headed and Gutted:

Fish from which the heads and entrails have been removed. (étêté et eviscéré)

ICNAF:

International Commission for the Northwest Atlantic Fisheries, (ICNAF), was established under the International Convention for the Northwest Atlantic Fisheries, (Can.T.S., 1950, no. 10). Its mandate was to undertake studies and scientific investigations, and to present to member countries proposals designed to keep the stocks of those species of fish supporting international fisheries in the Convention area at a level permitting the maximum sustained catch. ICNAF was replaced by the Northwest Atlantic Fisheries Organisation, (NAFO), in 1978. (ICNAF)

ICNAF/NAFO Area:

This is the area of the Atlantic Ocean to which the International Convention for the Northwest Atlantic Fisheries applied. When that Convention was replaced by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, (NAFO Convention), the latter applied to the same area. The "Convention area" is divided into seven sub-areas, numbered 0 to 6, for the purposes of scientific fisheries research and the collection of statistics. Each sub-area is divided into divisions, represented by a letter of the alphabet. Some divisions are divided into

subdivisions, either north or south. Divisions 4R, 4S and 4T are located inside the Gulf of St. Lawrence. Subdivision 4Vn extends into the Gulf across the fisheries closing line in Cabot Strait. See also ICNAF and NAFO. (zone de ICNAF/NAFO)

Inshore Fishery:

Fishery conducted close to the shore by boats less than 65 feet (19.8 m) in length. Vessels between 65 and 100 feet are sometimes referred to as mid-shore vessels. See also "Offshore Fishery." (pêche cotière)

NAFO:

Northwest Atlantic Fisheries Organisation, (NAFO) was established under the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, concluded in Ottawa, October 24, 1978. Its object is to contribute, through consultation and cooperation, to the optimum utilization, rational management and conservation of the fishery resources of the area to which the Convention applies. (NAFO)

Non-Gulf-Based Vessel:

A vessel whose home port is outside the Gulf of St. Lawrence. (bateaux basés à l'extérieur du golfe)

Non-Traditional Species:

Species for which there has never been a significant Canadian offshore fishery; e.g., silver hake, argentine, squid, mackerel, grenadier. (espèces non-traditionnelle)

Offshore Fishery:

Fishery pursued mainly by vessels over 100 feet (30.48 m) in length which fish beyond 12 miles from shore. See also "Inshore Fishery." (pêche hauturière)

Pack Ice:

Floating ice in pieces of considerable size 'packed' together over a large area. The extent and density of the pack ice affects the navigability of the sea. (See Figure 4 and Annex 11.) (banquise)

Quota:

Portion of total allowable catch (TAC) allocated to a particular group or enterprise. (quota)

Round Weight:

The weight of the fish as it is taken from the water. (poids entier)

Side Trawler:

Fishing vessel on which the trawl is towed from gallows fixed on one side of the vessel. (chalutier à pêche latérale)

Species:

A group of similar fish having in common characteristics which distinguish them within a genus. (espèce)

Stern Trawler:

Fishing vessel on which the trawl is hauled aboard over a large ramp through an opening at the "rear" (stern) of the vessel. (chalutier à pêche arrière)

Stock:

A relatively discrete population of fish of a given species which is found in a specific geographical area. (stock)

Sub Area:

See ICNAF/NAFO area. (sous-zone)

Subdivision:

See ICNAF/NAFO area. (subdivision)

TAC:

See total allowable catch. (TAC)

Tonne (metric ton):

One thousand kilograms (2,204 lbs). It is the standard unit of volume in fisheries statistics. It is abbreviated t. (tonne métrique)

Total Allowable Catch (TAC):

The total catch permitted by Canada from a stock in a given year. The TAC for each stock is set in the light of scientific assessment and consultation

with representatives of provincial governments and of the fishing industry. The factors taken into account in determining the TAC include the size and stability of the fish population and the rebuilding of depressed stocks. (total admissibles des captures)

Traditional Groundfish Species:

Species for which there has been a significant Canadian fishery. They include cod, haddock, redfish, pollock and flatfish. (espèces traditionnelles de poisson de fond)

Trawl:

A large bag net which is towed behind a vessel. The commonly used "otter trawl" is a cone-shape net which is towed along the ocean bottom to catch groundfish. (chalut)

Trawler:

Fishing vessel that uses a trawl to fish. (chalutier)

Wetfish Trawler:

Trawler that preserves its catch on board by stowage in ice. (chalutier de pêche fraîche)

LEGEND

LEGENDE

Limit of Fishing Zone 1 as determined by Order in Council P.C. 1971-368

Limit of the St. Lawrence River

Limit of N.W.T. boundaries and divisions

Note: This chart is based on Canadian Hydrographic Chart 4490

Note: Cette carte est basée sur la carte 4490 du Service hydrographique du Canada



CANADA

ATLANTIC COAST, GULF AND RIVER ST LAWRENCE

Compiled from Canadian Hydrographic Service and British Admiralty Charts

Meridian Projection

All bearings are true, true 1970 and are given from seaward

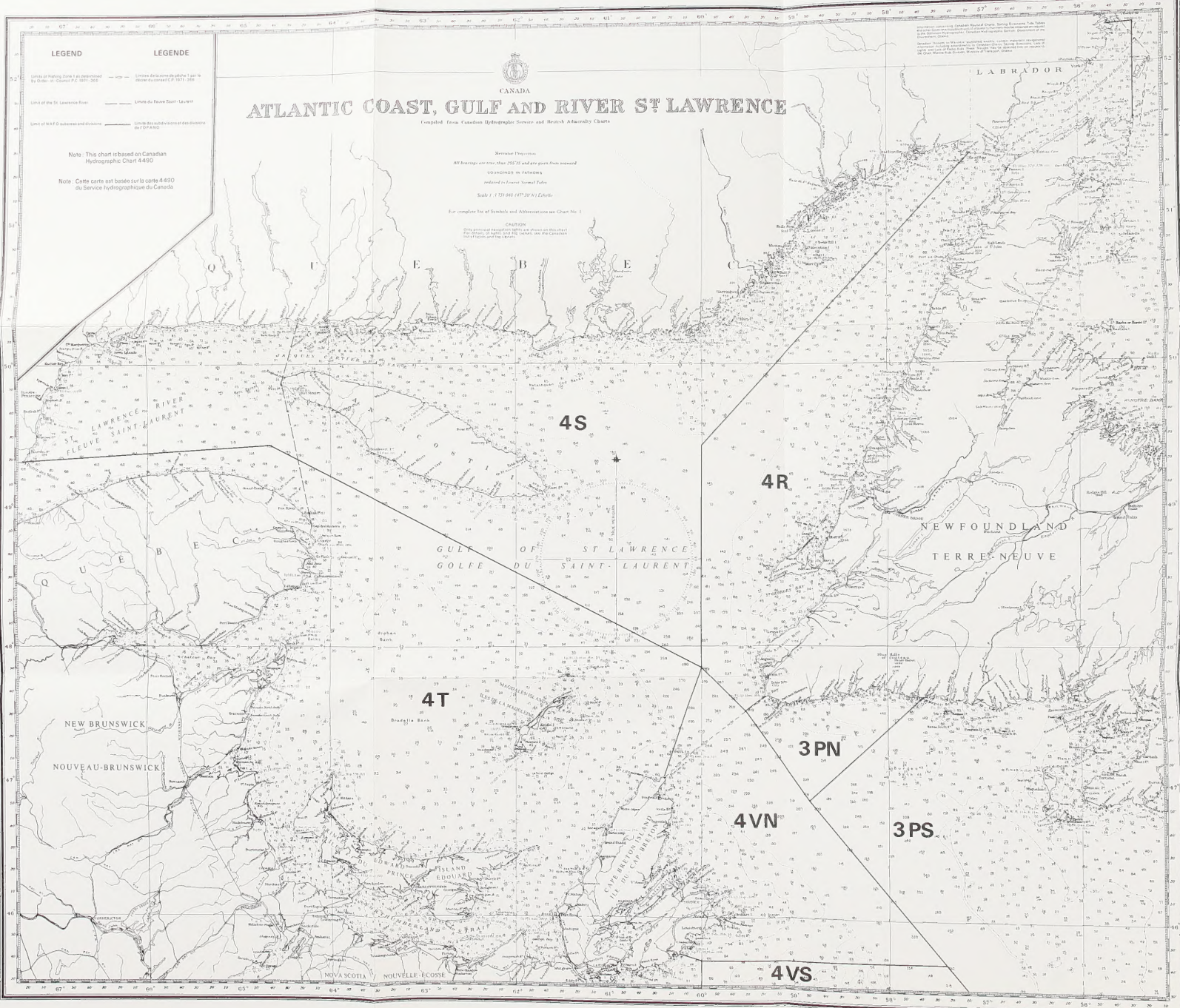
Distances in statute miles

Scale 1 : 751 000 (47° 30' N) Equator

For complete list of Symbols and Abbreviations see Chart No. 1

CAUTION

Only navigational marks shown are those in Blue-Red and Yellow-Black. See the Canadian List of Lights and Fog Signals.





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